

## **THE HONORABLE THOMAS S. ZILLY**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BLACKSTONE INTERNATIONAL, LTD.,  
a Maryland corporation,

**Plaintiff,**

V.

COSTCO WHOLESALE CORPORATION,  
a Washington corporation,

**Defendant.**

CASE NO. 2:20-CV-00964-TSZ

## **SECOND AMENDED COMPLAINT**

**JURY DEMAND**

Plaintiff Blackstone International, Ltd. (“Blackstone”), for causes of action against defendant Costco Wholesale Corporation (“Costco”), alleges as follows:

## I. SUMMARY

1. As part of its mission statement, Costco touts that it “will conduct [its] business” according to a “Code of Ethics” as follows:

## Our Code of Ethics

1. *Obey the law.*
2. Take care of our members.
3. Take care of our employees.
4. *Respect our suppliers.*

\* \* \* \*

5. Reward our shareholders.

## 5. Reward our shareholders.

**SECOND AMENDED COMPLAINT - 1  
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1       2.     Costco's "Code of Ethics" is published on Costco's website for the public to view  
 2 and it is also prominently displayed on the wall in the lobby of Costco's headquarters.

3       3.     Costco asserts that its employees are immersed in the "Code of Ethics" and that it  
 4 is purportedly part of Costco's way of doing business and treating its employees, shareholders,  
 5 and suppliers.

6       4.     Costco also proclaims that suppliers (like Blackstone) should expect Costco to be  
 7 honest and ethical.

8       5.     In addition, Costco emphasizes the importance of "transparency," including  
 9 specifically that Costco is transparent, and open and honest, with its suppliers (like Blackstone).

10      6.     Unfortunately, Costco not only seriously failed to be transparent in its dealings with  
 11 Blackstone, while repeatedly violating its own "Code of Ethics," including by failing to "obey the  
 12 law" and failing to "respect" Blackstone, but also Costco did so intentionally, willfully, and/or  
 13 negligently to the substantial detriment to Blackstone.

14      7.     This dispute involves a more than 15-year business relationship between plaintiff  
 15 Blackstone (a supplier) who supplied defendant Costco (a retailer) with consumer products for  
 16 retail to consumers. During those many years, Blackstone consistently supplied Costco with high-  
 17 quality and affordable consumer goods, including, most recently, lighted vanity mirrors, personal  
 18 fans, and oscillating tower fans, which generated well over a hundred million dollars for Costco.

19      8.     In supplying such products, Blackstone expends substantial time, money,  
 20 resources, and great care to create the products it supplies to retailers (like Costco).

21      9.     Blackstone designs and owns the intellectual property regarding the products,  
 22 packaging, instruction manuals, and related materials, and uses manufacturers, including certain  
 23 factories in China, to manufacture the products Blackstone has designed for sale to retailers (like  
 24 Costco) and other outlets.

25      10.    Over the course of its business relationship with Blackstone, Costco has sold to  
 26 consumers at its wholesale clubs more than four million units of products supplied by Blackstone,

1 resulting in a substantial profit to Costco.

2       11. In particular, two of Blackstone's most popular products — a 40" tall, slim,  
 3 oscillating, variable speed and mode tower fan with a remote control (the "Blackstone Tower Fan")  
 4 and a 13" personal fan (the "Blackstone Personal Fan") — had been consistently achieving  
 5 exponential sales growth since 2016.

6       12. Both the Blackstone Tower Fan and Blackstone Personal Fan have been sold by  
 7 Blackstone under the brand names "Cascade" and "Sunter."

8       13. Impressed by the ever-growing sales, and eager to sell even more, Costco agreed in  
 9 May 2018 to purchase from Blackstone approximately 2.5 million Blackstone Tower Fans and in  
 10 excess of half a million "2-Packs" of Blackstone Personal Fans for the 2019 season (the "2019 Fan  
 11 Program Agreement"). According to Costco's own internal documents, the sales of Blackstone  
 12 Tower Fans and Blackstone Personal Fans would be the biggest non-food MVM sales program  
 13 ever done by Costco and Costco proclaimed that it would make history at Costco.

14       14. Pursuant to the 2019 Fan Program Agreement, Costco agreed to pay Blackstone  
 15 more than \$70 million. In turn, Blackstone completed all of the significant work necessary to  
 16 begin shipments before the end of 2018, Costco issued purchase orders to Blackstone, and  
 17 Blackstone starting shipping fans to Costco in November 2018 in accordance with the 2019 Fan  
 18 Program Agreement.

19       15. Unbeknownst to Blackstone, however, Costco secretly conspired with the agent  
 20 (*i.e.*, Collin Carpenter ("Carpenter")) of a competing supplier (*i.e.*, Technomate Manufactory, Ltd.  
 21 ("Technomate")) and its newly-created affiliate (*i.e.*, E2 Limited ("E2")), in order to maximize  
 22 Costco's own profits.

23       16. In fact, E2 was intentionally created to work covertly with Costco to supplant  
 24 Blackstone.

25       17. Far from the "transparency" Costco purports to pride itself on, and before Costco  
 26 even canceled the purchase orders that it had already issued to Blackstone (and which Blackstone  
 27

1      was shipping against pursuant to the 2019 Fan Program Agreement), Costco went behind  
 2 Blackstone's back and contracted directly with Technomate/E2/Carpenter to have Blackstone's  
 3 fans supplied — without Blackstone's knowledge or consent — directly to Costco, and thereby  
 4 cutting-out Blackstone from the sale of its own products.

5            18. Subsequently, Costco refused to honor its 2019 Fan Program Agreement with  
 6 Blackstone and, ultimately, Costco cancelled the purchase orders it had already issued to  
 7 Blackstone and for which Blackstone had already completed the substantial work to fulfill,  
 8 including having already shipped product in accordance with the 2019 Fan Program Agreement.

9            19. Even worse, the fans that Costco imported, distributed, and/or sold for the 2019  
 10 season falsely designated such products as being "distributed by" Blackstone, even though Costco  
 11 had wrongfully contracted directly with Technomate/E2/Carpenter and/or DCI/Homestar. Among  
 12 other misconduct, Costco also knowingly and unlawfully utilized Blackstone's customer service  
 13 information, warranty cards, and UPC numbers. Indeed, Blackstone is still receiving customer  
 14 complaints from consumers who purchased falsely-designated Blackstone fans that were  
 15 manufactured directly for Costco. And some of those customers have even stated that Costco told  
 16 them to call Blackstone, despite that the fans were not distributed by Blackstone.

17            20. Not content with having already exploited Blackstone for Costco's own improper  
 18 ends during the 2019 season, Costco began selling a knock-off of Blackstone's Tower Fan in the  
 19 2020 season and again in the 2021 season. Although Costco has labeled the knock-offs with the  
 20 name "Sierra Tower Fan" (for the 2020 season) and "OmniBreeze Tower Fan" (for the 2021  
 21 season), there can be no serious dispute that Costco has infringed Blackstone's intellectual  
 22 property. In fact, not only did Costco intentionally copy Blackstone's design of the tower fan,  
 23 which enjoys trade dress protection, but Costco also intentionally copied Blackstone's product  
 24 manuals, which are protected by registered copyrights. Blackstone has and continues to receive  
 25 customer complaints from consumers who purchased the knock-off fans sold by Costco who  
 26 believe (and/or have been told by Costco) that those fans were also distributed by Blackstone.

21. In short, Costco has engaged in an extensive scheme and course of conduct by which Costco has (among other claims) breached its agreement with Blackstone, made misrepresentations and omissions, engaged in unfair and deceptive trade practices, tortuously interfered with Blackstone's business relationships and contracts, infringed Blackstone's intellectual property, falsely designated the origin of certain goods, and both deceived the public and unfairly competed with Blackstone.

22. At the heart of Costco's misconduct is its serious (and intentional) failure to be "transparent" with Blackstone and Costco's willful and/or negligent decisions to repeatedly violate the law and wrongfully *dis*-respect Blackstone — a loyal, dedicated, and trustworthy supplier to Costco for more than fifteen years. Costco (the bully and Goliath in this case) conspired with Chinese suppliers and their local agent to cut-out Blackstone (the small, family business and David in this case), steal Blackstone's intellectual property, and destroy Blackstone's business — all in the name of profit.

23. Accordingly, this is an action for breach of contract, breach of implied covenant of good faith and fair dealing, fraud, negligent misrepresentation, tortious interference, violations of the Lanham Act, unfair competition, violation of the Washington Consumer Protection Act, and copyright infringement.

## **II. PARTIES**

24. Plaintiff Blackstone is a Maryland corporation with its principal place of business in Windsor Mill, Maryland.

25. Defendant Costco is a Washington corporation with its principal place of business in Issaquah, Washington.

### **III. JURISDICTION AND VENUE**

26. This Court has subject matter jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C.A. § 1338 (copyrights and Lanham Act), and subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b).

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1 (related unfair competition claims) and 28 U.S.C. § 1367 (supplemental jurisdiction).

2       27. In addition, pursuant to 28 U.S.C. § 1332, this Court also has subject matter  
 3 jurisdiction because there is complete diversity of citizenship between Blackstone and Costco, and  
 4 the amount in controversy exceeds \$75,000.

5       28. This Court has personal jurisdiction over Costco because, *inter alia*, Costco is a  
 6 Washington corporation and has committed tortious acts in the State of Washington, transacted  
 7 substantial business and has substantial contacts with the State of Washington, and/or conduct (or,  
 8 at all relevant times, conducted) business in the State of Washington and has purposefully availed  
 9 itself of the privilege of conducting business in the State of Washington. Costco has sufficient  
 10 minimum contacts with the State of Washington to render the exercise of personal jurisdiction  
 11 over them consistent with the traditional notions of fair play and substantial justice.

12       29. Among other contacts, Costco is subject to personal jurisdiction in this Court  
 13 pursuant to the Due Process Clause of the Fourteenth Amendment of the Constitution of the United  
 14 States based on at least the following: (a) Costco has substantial contacts with the State of  
 15 Washington and has transacted substantial business in the State of Washington; (b) Costco  
 16 promoted products to consumers in the State of Washington; (c) Costco committed tortious acts in  
 17 the State of Washington and/or resulting in harm in the State of Washington; (d) Costco supplied  
 18 products to consumers and/or sold a significant number of products in the State of Washington;  
 19 (e) Costco manufactured and/or had manufactured products for sale in the United States, including  
 20 the State of Washington; (f) Costco manufactured and/or had manufactured products and placed  
 21 them into the stream of commerce with the intention that they would be purchased by consumers  
 22 in the State of Washington; (g) Costco imported, delivered, and/or supplied products into the  
 23 United States for sale in the State of Washington that infringe Blackstone's intellectual property  
 24 rights; and (h) Costco has purposely directed its activities and has consummated numerous  
 25 transactions in the State of Washington, and/or has performed acts by which Costco purposely  
 26 availed itself of the privilege of conducting activities in the State of Washington, thereby invoking  
 27

1 the benefits and protections of the law of the State of Washington.

2       30.     Venue in this Court is proper pursuant to, *inter alia*, 28 U.S.C. § 1391(b) because  
 3 Costco resides in this judicial district, a substantial part of the events or omissions giving rise to  
 4 the claims occurred in this judicial district, and/or Costco transacts business or transacted business  
 5 in this judicial district at the time the causes of action arose.

6       31.     In addition, an arbitrator has already decided that the claims asserted by Blackstone  
 7 in this action “are not arbitrable.”

#### 8                  IV.     STATEMENT OF FACTS

9       A.     **Over the Course of More Than Two Decades, Blackstone Made Substantial**  
 10      **Investments in Growing Its Business, Developing Its Products, and Creating Its**  
 11      **Intellectual Property.**

12       32.     Founded approximately twenty-five years ago, Blackstone designs and markets  
 13 safe, practical, and affordable consumer goods for sale to major national and international retailers.  
 14 Such products include, but are not limited to, lighting, mirrors, electronics, games, and fans.

15       33.     Blackstone developed and designed its products through the substantial investment  
 16 of time, labor, money, industry experience, and other resources. And Blackstone’s intellectual  
 17 property was created through significant time, effort, and expense marketing and developing  
 18 Blackstone’s products.

19       34.     Blackstone owns and has developed registered and common law intellectual  
 20 property, including copyright protection and trade dress rights, in connection with (among other  
 21 intellectual property) the design elements, packaging, and package inserts related to Blackstone’s  
 22 products.

23       35.     For example, Blackstone designed the Blackstone Tower Fan (*i.e.*, a 40” tall, slim,  
 24 oscillating, variable speed and mode tower fan with a remote control, the Blackstone Personal Fan  
 25 (*i.e.*, a 13” personal fan), and a lighted vanity mirror (the “Blackstone Vanity Mirror”).

26       36.     Through the substantial investment of time, labor, money, industry experience, and  
 27 other resources over the course of more than two decades, Blackstone has developed a

1 sophisticated and successful business model by which Blackstone designs the products, packaging,  
 2 instruction manuals, and related materials, and uses third party manufacturers, including certain  
 3 factories in China, to manufacture the products Blackstone has designed for sale to retailers and  
 4 other outlets.

5       37. Blackstone has the sole right to supply to retailers (including Costco) certain  
 6 products that embody Blackstone's intellectual property, including the Blackstone Tower Fan.

7       38. Among other intellectual property, the stylized "B" associated with Blackstone's  
 8 Tower Fan has been filed for trademark registration with the United States Patent and Trademark  
 9 Office with Registration No. 3,222,542, as well as Registration No. 6,687,249.

10      39. Blackstone owns trademark protection for the Cascade brand name, logo, and  
 11 proprietary alphabet used on the packaging and back of the Blackstone Tower Fan, as well as the  
 12 remote. Blackstone's name and logo is also protected.

13      40. Blackstone also owns trade dress and copyright protection for the packaging and  
 14 manuals, as well as trade dress protection for the overall design, the louver system, grill, arched  
 15 top form, control panel layout, control panel and icons, logo application, cylindrical stock, base,  
 16 fit, and finish of the Blackstone Tower Fan.

17      41. Blackstone also owns trade dress protection for the remote-control design including  
 18 the "circle and cross" layout, control icons, and logo application.

19      42. Blackstone has also timely registered for copyright protection of the manuals  
 20 associated with its Blackstone Tower Fan. Specifically, the manuals associated with Blackstone's  
 21 Tower Fan have been filed for copyright registration with the United States Copyright Office with  
 22 Registration Nos. TX0008690544, TX0008696259, and TXu002132551 (collectively, the  
 23 "Copyrighted Works").

24 **B. Blackstone Also Made Substantial Investments in Perfecting Its Competitive Edge**  
**and Developing Its Business Relationships and Contractual Relations.**

25      43. Blackstone has also carefully cultivated its successful brand and reputation in the  
 26 industry through the substantial investment of time, labor, money, industry experience, and other

1 resources over the course of more than two decades.

2       44. Based on extensive marketing, promotion, and sales throughout the United States,  
3 Blackstone has achieved commercial success with its products.

4       45. As a result of the sales, promotion, and marketing by Blackstone, the trade dress of  
5 the Blackstone Tower Fan has also developed and acquired secondary meaning to consumers, in  
6 that the consuming public has come to associate tower fans bearing such dress with Blackstone.

7       46. In addition, through the substantial investment of time, labor, money, industry  
8 experience, and other resources, Blackstone has developed significant business relationships with  
9 various manufacturers.

10      6. For example, before Costco's tortious interference and other misconduct,  
11 Blackstone had contracted with various Chinese factories that were represented to be owned by,  
12 affiliated with, and/or otherwise controlled through Allen Zhang a/k/a Zhang Lin, including  
13 Design Center International, Ltd. and, subsequently, its successor and/or alter ego Home Star  
14 International Ltd. ("DCI/Home Star"), as well as Zhejiang Mikia Lighting Co., Ltd. ("Mikia").

15      47. As a result of Blackstone's protected intellectual property, unique methods and  
16 processes, proprietary modeling and formulas, cultivated relationships, and valuable and exclusive  
17 know-how, which were developed by Blackstone through a substantial investment of time and  
18 money, Blackstone was able to deliver high quality consumer products at highly competitive price  
19 points.

20 **C. Costco Did Substantial Business with Blackstone for More Than 15 years, and in May**  
**2018 Costco Agreed to a Fan Program with Blackstone that Would "Make History"**  
**at Costco.**

22      48. Through the substantial investment of time, labor, money, industry experience, and  
23 other resources, Blackstone also developed a significant business relationship with Costco,  
24 including the sale of consumer products to Costco for sale in its retail clubs in the United States,  
25 and later to other Costco-branded entities in Canada, Mexico, Australia, Taiwan, and Korea.

26      49. In fact, for more than 15 years, Blackstone sold lighting products, mirrors,

1       electronics, gaming products, and fans to Costco. Those sales exceeded over three-and-a half-  
 2 million product units sold and accounted for over \$200 million in revenue to Blackstone.

3       50. Blackstone developed and designed a fan program for Costco in 2016 which  
 4 achieved great success. Blackstone continued to improve upon and evolve the program for  
 5 continued success, and sold Costco the program in 2017, 2018, and 2019.

6       51. For example, Blackstone developed and designed a fan program that involved the  
 7 sale of the Blackstone Tower Fan and Blackstone Personal Fan that could be marketed to  
 8 consumers in attractive packaging, either separately or together, at a value that would also be  
 9 attractive to consumers.

10      52. Blackstone further refined the fan program to feature the sale of the Blackstone  
 11 Tower Fan alone and the Blackstone Personal Fan in a “2-pack.”

12      53. Blackstone’s design and marketing of the Blackstone Tower Fan and Blackstone  
 13 Personal Fan achieved superior commercial success in a short period of time through sales by  
 14 Blackstone to Costco.

15      54. In fact, the Blackstone Tower Fan and the Blackstone Personal Fan were on track  
 16 to become (according to Costco’s own projections) the biggest multi-vendor mailer (“MVM”)  
 17 program for a non-food item that had ever been done by Costco. Costco represented that the  
 18 Blackstone Tower Fan would be featured in Costco’s monthly MVM program, and Costco  
 19 forecasted that it expected to sell 1.6 million units in 25 days. As described by Costco, given the  
 20 dollar and unit volume, the program had the attention of senior management at the highest levels.  
 21 In Costco’s own words, it would have “made history” at Costco.

22      55. Specifically, in May 2018, based on the phenomenal commercial success, Costco  
 23 agreed to purchase from Blackstone approximately 2.5 million Blackstone Tower Fans and more  
 24 than 500,000 “2-Packs” of Blackstone Personal Fans for the 2019 season (*i.e.*, the 2019 Fan  
 25 Program Agreement).

26      56. Pursuant to the 2019 Fan Program Agreement, Costco agreed to pay Blackstone

1 more than \$70 million, and shipments were scheduled to begin before the end of 2018.

2       57. The 2019 Fan Program Agreement is documented by (among other things) the  
 3 exchange of terms between Blackstone and Costco, an electronic document stored on Costco's  
 4 internal system that was also shared with Blackstone, the entries in Costco's "BPM" system,  
 5 Costco issuance of purchase orders to Blackstone, and Blackstone's shipment of fans based on the  
 6 purchase orders issued by Costco pursuant to the 2019 Fan Program Agreement.

7       58. Immediately after entering into the 2019 Fan Program Agreement with Costco,  
 8 Blackstone began the substantial work necessary to implement and execute on the 2019 Fan  
 9 Program Agreement, including extensive efforts related to the design of the products and  
 10 packaging, the pricing formulas and modeling, and the manufacturing flow and logistics.

11       59. In reliance on the 2019 Fan Program Agreement, and in order to supply the products  
 12 to Costco for the 2019 Fan Program Agreement, Blackstone also contracted with certain factories,  
 13 including DCI/Home Star.

14       60. DCI/HomeStar and Mikia agreed to manufacture and sell to Blackstone the  
 15 Blackstone Tower Fans and Blackstone Personal Fans for the 2019 Fan Program Agreement and  
 16 affirmed that agreement in writing at a meeting in August 2018, where representatives of  
 17 Blackstone, DCI/Home Star, and Mikia, including Zhang Yong (President of Mikia), met in person  
 18 to discuss (among other things) details relating to the manufacture and sale to Blackstone of the  
 19 Blackstone Tower Fans and Blackstone Personal Fans for Blackstone to supply to Costco for the  
 20 2019 Fan Program Agreement.

21       61. At that meeting, DCI/Home Star and Mikia agreed in writing that, among other  
 22 things, Blackstone was entitled to a \$2.5 million retainer and that DCI/Home Star and Mikia would  
 23 manufacture and sell the Blackstone Tower Fans and Blackstone Personal Fans to Blackstone in a  
 24 written agreement translated into English and Chinese and signed by the parties (the "2018  
 25 Maryland Contract").

26       62. Pursuant to the 2018 Maryland Contract, Mikia and DCI/Home Star agreed to

1 manufacture the Blackstone Tower Fans and Blackstone Personal Fans for sale by DCI/Home Star  
 2 to Blackstone for exclusive resale to Costco.

3       63.      Costco knew that Blackstone was utilizing DCI/Home Star, and that a portion of  
 4 the fans for the 2019 Fan Program Agreement would also be manufactured by Mikia. In fact, prior  
 5 to accepting shipments from Blackstone, Blackstone identified the factories that would be utilized  
 6 to manufacture the fans for the 2019 Fan Program Agreement, and Costco accepted those factories.  
 7 Costco had also previously audited both factories, which had been manufacturing Blackstone  
 8 products for several years and identified internally how much product would be coming from each  
 9 respective factory.

10       64.      Ultimately, in furtherance of its commitment to the 2019 Fan Program Agreement  
 11 — and after Blackstone had already completed substantial work in performance of, and in reliance  
 12 on, the 2019 Fan Program Agreement — Costco began issuing purchase orders to Blackstone.

13       65.      For example, by October 3, 2018, Costco had already issued more than 1000  
 14 purchase orders to Blackstone for Blackstone Tower Fans, totaling more than 1.5 million units and  
 15 Costco planned to issue additional purchase orders in the coming months that would bring the total  
 16 amount of the Blackstone Tower Fan to over 2.5 million units pursuant to the 2019 Fan Program  
 17 Agreement.

18       66.      By December 17, 2018, Costco had also already issued more than 100 additional  
 19 purchase orders for Blackstone Personal Fans, totaling more than 350,000 units and Costco  
 20 planned to issue additional purchase orders in the coming months that would bring the total amount  
 21 of the 2-packs of the Blackstone Personal Fan to over 500,000 units pursuant to the 2019 Fan  
 22 Program Agreement.

23       7.       In turn, Blackstone issued purchase orders to DCI/Home Star for the manufacturing  
 24 of 2.5 million Blackstone Tower Fans, approximately 1.7 million of which were designated to be  
 25 manufactured by Mikia and the other 800,000 fans by DCI/Home Star. Pursuant to the 2018  
 26 Maryland Contract, DCI/Home Star in turn forwarded the invoices to Mikia for the Blackstone  
 27

1 Tower Fans that Mikia had agreed to manufacture for Blackstone.

2       67. Blackstone also issued purchase orders to DCI/Home Star for the Blackstone  
3 Personal Fans.

4       68. Pursuant to the 2018 Maryland Contract, Mikia and DCI/Home Star agreed to  
5 manufacture the Blackstone Tower Fans and Blackstone Personal Fans for sale by DCI/Home Star  
6 to Blackstone for exclusive resale to Costco.

7       69. Pursuant to and in reliance on the 2019 Fan Program Agreement, Blackstone had  
8 already began shipping fans to Costco in November 2018. And by the beginning of December  
9 2018, approximately 275,000 Blackstone Tower Fans had already been manufactured for  
10 Blackstone.

11 **D. Costco Tortiously Interfered with Blackstone's Contractual Relations, Made**  
12 **Numerous Misrepresentations to Blackstone, and Fraudulently Concealed Material**  
**Information From Blackstone.**

13       70. Despite its 2019 Fan Program Agreement with Blackstone, and knowing that  
14 Blackstone had already invested substantial time, money, and other resources (and had, in fact,  
15 already started shipping fans pursuant to the 2019 Fan Program Agreement), Costco conspired  
16 with Carpenter (*i.e.*, an agent), Technomate (*i.e.*, a competing supplier), and E2 (*i.e.*, its newly-  
17 created affiliate).

18       71. For example, at least as early as November 5, 2018, but unbeknownst to Blackstone,  
19 Costco began secretly communicating directly with Technomate/E2/Carpenter. Instead of  
20 honoring the 2019 Fan Program Agreement with Blackstone by refusing to deal directly with  
21 Technomate/E2/Carpenter, Costco continued to conspire with Technomate/E2/Carpenter behind  
22 Blackstone's back and tortiously interfered with Blackstone's contractual relationships with the  
23 factories.

24       72. By eliminating Blackstone from the equation and buying through  
25 Technomate/E2/Carpenter, Costco sought to improve its profit margin on the sale of Blackstone's  
26 fans. Costco was also motivated to cut Blackstone out, so that Costco could restructure the fan

1 program in order to take advantage of significant savings on tariffs.

2       73. Ultimately, in blatant disregard of Costco's commitments under the 2019 Fan  
 3 Program Agreement, and unbeknownst to Blackstone, Costco secretly contracted directly with  
 4 Technomate/E2/Carpenter before Blackstone was forced to execute a limited "Intellectual  
 5 Property License Agreement" that was not signed until January 11, 2019 and which expired by its  
 6 terms no later than November 15, 2019 (the "Expired License").

7       74. In fact, before Blackstone was forced to execute the Expired License and *without*  
 8 *disclosing to Blackstone*, Costco signed a "Global Import Supplier Agreement" with E2 dated  
 9 November 29, 2018. Costco also signed a "Vendor Purchase Program Agreement" with E2, which  
 10 identified Carpenter as the "Representative," before Blackstone was forced to execute the Expired  
 11 License and *without disclosing to Blackstone*. Before Blackstone was forced to execute the  
 12 Expired License and *without disclosing to Blackstone*, Costco also approved the "Item Agreement"  
 13 for Technomate/E2/Carpenter to supply Blackstone's fans directly to Costco, which was based  
 14 entirely on the substantial time, money, and other resources that Blackstone had already invested  
 15 pursuant to and in reliance on the 2019 Fan Program Agreement.

16       75. Moreover, by as early as December 13, 2018, Costco had already decided that  
 17 Blackstone would no longer be the supplier for the Blackstone Tower Fan. And by December 20,  
 18 2018, which was also before Blackstone was forced to execute the Expired License and *without*  
 19 *disclosing to Blackstone*, Technomate/E2/Carpenter was described as the vendor working to  
 20 supply, ship, process and overall keep the ball rolling for the Blackstone Tower Fans.

21       76. Before Blackstone was forced to execute the Expired License and *without*  
 22 *disclosing to Blackstone*, Costco also issued purchase orders to Technomate/E2/Carpenter to  
 23 supply Blackstone's fans directly to Costco. In fact, Technomate/E2/Carpenter already had  
 24 Blackstone's fans on the water and had already made more than 60 shipments, totaling more than  
 25 100,000 units, before Blackstone was forced to execute the Expired License and *without disclosing*  
 26 *to Blackstone*. According to Costco, before Blackstone was forced to execute the Expired License

and without disclosing to Blackstone, Technomate/E2/Carpenter was working in concert with Costco.

77. Astonishingly, and unbeknownst to Blackstone, Costco even agreed to purchase from Technomate/E2/Carpenter approximately 300,000 units that had previously been rejected by Blackstone in 2018 because they were defective. Those defective units were shipped at Costco's direction in 2019 under cancelled purchase order numbers, improperly utilizing Blackstone's product manuals, and wrongfully bearing Blackstone's customer service information, and (upon information and belief) were sold in their defective state.

78. Instead of being transparent with Blackstone, on November 6, 2018, Costco (through Sierra Lowe) represented to Blackstone that Costco had supposedly received information from a “very reputable vendor” that Blackstone allegedly owed money to Mikia. But any such representations regarding monies allegedly owed to Mikia were false, and Blackstone expressly informed Costco that Mikia was lying and was not owed anything and that Blackstone had evidence to substantiate its position. In fact, Blackstone’s contractual relationship with Mikia for the manufacture of fans was the 2018 Maryland Contract. Blackstone did not have a payment relationship with Mikia. Rather, Mikia’s payment relationship was with DCI/Home Star, which Blackstone made clear to Costco.

79. When Blackstone confronted Costco regarding the false allegations, Costco (through Jack Weisbly) repeatedly represented that it would provide to Blackstone the alleged “unpaid” Mikia invoices, so that Blackstone could then provide to Costco the proof of payment. In fact, Costco said that if Blackstone provided such proof, Costco would *not* do business with Mikia. However, despite several attempts by Blackstone to follow-up with Costco (including with Jack Weisbly) to obtain the allegedly “unpaid” invoices, Costco instead chose to ignore and never provided the alleged “unpaid” Mikia invoices. In short, Costco never provided Blackstone with the opportunity to disprove the false allegations, which Blackstone was (and still is) easily able to do.

1       80. Before Blackstone was forced to execute the Expired License, in November and  
 2 December 2018, Costco (through Sierra Lowe, Michelle Rado, Lester Cox, and Jack Weisbly)  
 3 also falsely represented to Blackstone that the so-called “very reputable vendor” was merely the  
 4 “conduit” of information concerning the alleged monies owed to Mikia. In furtherance of its  
 5 fraudulent inducement to force Blackstone to execute the Expired License, Costco misrepresented  
 6 that it allegedly received information from a mere “conduit” and Costco withheld that it was  
 7 dealing directly with Technomate/E2/Carpenter.

8       81. Costco also failed to disclose that it had already contracted with E2 in November  
 9 2018, a newly-created affiliate of Technomate, who was also “represented” by Carpenter. Instead,  
 10 in addition to the fraudulent omissions, in November 2018 through January 14, 2018, Costco  
 11 (through Sierra Lowe, Michelle Rado, Lester Cox, and Jack Weisbly) also falsely misrepresented  
 12 that it was engaging with Mikia.

13       82. The timing of the creation of E2 is also particularly troubling. E2 did not even *exist*  
 14 until it was formed on or about October 30, 2018, for the specific purpose of working with Costco  
 15 to sell Blackstone’s fans. And by November 29, 2018 — and before Costco even canceled the  
 16 purchase orders that it had already issued to Blackstone — Costco had already contracted with  
 17 Technomate/E2/Carpenter to supply Blackstone’s fans directly to Costco, without Blackstone’s  
 18 knowledge or consent. Costco then issued tens-of-millions of dollars of purchase orders to E2  
 19 for the biggest non-food MVM sales program ever done by Costco. In other words, Costco  
 20 conspired with an entity that had existed for less than a month on a sales program that was  
 21 scheduled to make history at Costco.

22       83. Moreover, until recently (and despite a prior Order granting a motion to compel in  
 23 the King County Superior Court) Costco continued to wrongfully conceal the identity of the so-  
 24 called “very reputable vendor.” However, Costco has now finally admitted that the so-called “very  
 25 reputable vendor” was Technomate.

26       84. Previously, on July 8, 2020, the King County Superior Court granted Blackstone’s  
 27

1 motion to compel and ordered Costco to (among other things) identify the “very reputable vendor,”  
 2 including both “defendants John Doe and Doe Entity.” In response to the Order, Costco (through  
 3 its attorney) originally *mis*-represented that “Home Star was the ‘very reputable vendor.’” When  
 4 pressed to also identify the “John Doe” as required by the Court’s Order, Costco (through its  
 5 attorney) then *mis*-represented that “Doug Leady, of Home Star, reached out to Costco.” A month  
 6 later, Costco (through its attorney) retracted its statements regarding “Home Star” and “Doug  
 7 Leady,” and instead represented that “Collin Carpenter reached out to Costco and referenced issues  
 8 between Blackstone and its existing vendors.” However, despite the Court’s Order, Costco refused  
 9 to also identify the “Doe Entity,” which was recently revealed by Costco to be Technomate.

10       85. Contrary to Costco’s fraudulent misrepresentations to Blackstone before  
 11 Blackstone was forced to execute the Expired License, Costco has since admitted years later that  
 12 Carpenter — the “agent” and “representative” of Technomate — was *not* merely a “conduit” of  
 13 information, but rather Technomate, E2, and Carpenter were involved the whole time.

14       86. Similarly, Costco admitted that, not only were Technomate, E2, and Carpenter  
 15 involved in 2019 fan season, but Technomate, E2, and Carpenter remained involved for the 2020  
 16 fan season when Costco begin selling knock-off fans re-named as the “Sierra” tower fan.

17       87. Despite Costco’s repeated failures to disclose to Blackstone, Costco has also  
 18 admitted — again, years later — that the involvement of Technomate, E2, and Carpenter was  
 19 critically *material* to Costco.

20       88. As described above, Costco has also emphasized the importance of transparency,  
 21 including specifically the identity of those involved in the supply and manufacturing chain. And  
 22 Costco has admitted that “transparency,” including by Costco, is materially important.

23       89. Before Blackstone was forced to execute the Expired License, and at least as early  
 24 as December 4, 2018, Blackstone also expressly informed Costco that “the identity of the other  
 25 vendor is material to Blackstone’s participation in the program.” However, although it was  
 26 material to Costco and despite that Costco also knew that it was also material to Blackstone, Costco  
 27

1      never disclosed to Blackstone that it was dealing with Technomate/E2/Carpenter before  
 2      Blackstone was forced to execute the Expired License. Rather, at all relevant times in November  
 3      2018 through January 14, 2019 before Blackstone was forced to execute the Expired License,  
 4      Costco repeatedly stated Costco (through Sierra Lowe, Michelle Rado, Lester Cox, and Jack  
 5      Weisbly) that it was working directly with Mikia, despite knowing otherwise by (among other  
 6      things) having signed contracts with Technomate/E2/Carpenter and issuing purchase orders to  
 7      Technomate/E2/Carpenter.

8                90.      In fact, the first time Blackstone even heard of E2 was *after* Blackstone was forced  
 9      to execute the Expired License. But even then, Costco continued to lie and conceal the truth.

10          91.      Specifically, on January 15, 2019, Costco ultimately provided a copy of its “Global  
 11     Import Supplier Agreement” with E2. When confronted by Blackstone with questions regarding  
 12     E2 on January 17, 2019, Costco (including through Sierra Lowe and Michelle Rado) represented  
 13     “It’s Mikia – E2 is Mikia.” And Costco (again) failed to disclose the involvement of Technomate  
 14     and Carpenter. Nor did Costco disclose that E2 was not, in fact, Mikia. Even when Blackstone  
 15     requested a copy of its “Vendor Purchase Program Agreement” with E2, which would have  
 16     identified Carpenter as the “Representative,” Costco refused to provide the agreement to  
 17     Blackstone.

18          **E. Costco Also Conspired to Unfairly Compete with Blackstone, Threatened Blackstone,**  
 19     **and Inflicted Undue Duress on Blackstone in Order to Fraudulently Induce Execution**  
**of the Expired License.**

20          92.      In addition to the omissions, half-truths, and misrepresentations, Costco also  
 21     conspired to unfairly compete with Blackstone and facilitated the factories to breach their contracts  
 22     with Blackstone.

23          93.      For example, rather than inform Blackstone of its secret plans with  
 24     Technomate/E2/Carpenter, Costco strung Blackstone along and used Blackstone to gain valuable  
 25     information concerning the fan program designed by Blackstone (including, among other things,  
 26     Blackstone’s terms with the factories and pricing structures), so that Costco could use the

1 information to deal directly with the Technomate/E2/Carpenter and increase Costco's profits.

2       94. Based on Costco's misrepresentations and omissions, Blackstone also expended  
 3 additional time, money, and labor in an effort to continue executing on the 2019 Fan Program  
 4 Agreement, while Costco was — unbeknownst to Blackstone — frustrating Blackstone's ability  
 5 to do so. Blackstone negotiated with the factories, provided additional funds to the factories (as  
 6 well as offering a line of credit), and repeatedly attempted to obtain the factories' commitments to  
 7 honor their agreements with Blackstone.

8       95. Ultimately, because Costco was secretly dealing with Technomate/E2/Carpenter,  
 9 and had also engaged directly with representatives of DCI/Home Star, the factories (*i.e.*, both  
 10 Mikia and DCI/Home Star) ceased communicating with Blackstone and breached their contracts  
 11 with Blackstone. In short, as a result of Costco's improper actions in dealing directly with the  
 12 factories which Blackstone had contracted with (while concealing such information from  
 13 Blackstone) the factories had no reason to work with Blackstone anymore, because they now had  
 14 a direct line to Blackstone's customer (*i.e.*, Costco).

15       96. Moreover, Costco also threatened Blackstone and inflicted undue duress on  
 16 Blackstone in order to fraudulently induce execution of the Expired License.

17       97. Costco's threats began immediately in the first minutes of Blackstone's very first  
 18 call with Costco following Costco's communication with the so-called "very reputable vendor."

19       98. For example, on November 15, 2018, Costco (through Jack Weisbly) ordered  
 20 Blackstone to put all its cards on the table if it ever wanted to walk through the doors of Costco  
 21 again. In November 2018 through the execution of the Expired License, Costco (through Sierra  
 22 Lowe, Michelle Rado, Lester Cox, and Jack Weisbly) also threatened Blackstone that Costco was  
 23 going to do the 2019 fan program with or without Blackstone.

24       99. As a result of Costco's extreme duress and threats, Blackstone felt like it had a gun  
 25 to its head.

26       100. Based on Costco's extreme duress and threats that Costco would proceed with or  
 27

1 without Blackstone, Blackstone also felt like it no choice.

2       101. Blackstone did not want to execute the Expired License, however, Costco forced  
 3 Blackstone to sign by inflicting extreme duress. Knowing what it knows today — only after  
 4 Costco was compelled or otherwise required under law to divulge such information which it  
 5 otherwise resisted providing to Blackstone for years — Blackstone would *not* have executed the  
 6 Expired License. However, at the time, Costco forced Blackstone to sign by inflicting extreme  
 7 duress, including Costco's threats that it was going to move forward with the 2019 fan program  
 8 with or without Blackstone, threatening Blackstone to the point that it felt like it had a gun to its  
 9 head, and leaving Blackstone with no other choice but to acquiesce to Costco's demands.

10      102. In an effort to further exert its control over Blackstone, Costco even had the  
 11 audacity to demand that Blackstone waive its rights, so that Costco could continue to benefit from  
 12 Blackstone's work while giving Blackstone nothing in return.

13      103. Moreover, Costco also increased the pressure by withholding monies due to  
 14 Blackstone on prior sales programs and threatening to cancel upcoming sales programs. Costco  
 15 also repeatedly threatened that, if Blackstone did not agree to Costco's demands regarding the  
 16 terms of the Expired License, then Costco would end its relationship with Blackstone and Costco  
 17 would proceed without Blackstone. Blackstone later found out that Costco did not have any  
 18 intention of continuing its relationship with Blackstone. Indeed, unbeknownst to Blackstone,  
 19 Blackstone had been internally "blacklisted" at Costco.

20      104. Ultimately, based on Costco's misconduct, Costco effectively prevented  
 21 Blackstone from enforcing its contractual rights with the factories in time for the 2019 season.  
 22 There was no opportunity for Blackstone to repair its relationship with the factories and also no  
 23 opportunity for Blackstone to pursue business with other factories and/or retailers for the 2019  
 24 season.

25      105. In fact, Costco also improperly encouraged, caused, and/or aided in DCI/Home  
 26 Star's wrongful pursuit of baseless claims against Blackstone. Costco also further threatened

1 Blackstone for having attempted to defend its intellectual property and other rights.

2       106. Under extreme duress, believing it had no alternative, based on Costco's  
 3 misrepresentations and omissions to Blackstone, and in an effort to mitigate its damages,  
 4 Blackstone executed the Expired License.

5       107. The Expired License was not signed by Costco until January 11, 2019, and then  
 6 subsequently signed Blackstone. Under the Expired License, Costco was granted a limited and  
 7 narrow license in relation to the Blackstone Tower Fan. The Expired License was also expressly  
 8 limited to a "term of one (1) year."

9       108. In November 2018 through the execution of the Expired License, Costco (through  
 10 Sierra Lowe, Michelle Rado, Lester Cox, and Jack Weisbly) had also led Blackstone to believe  
 11 that the Expired License was merely a "one-off" solution to a short-term problem to address the  
 12 circumstances of the 2019 fan program, and that Costco would continue doing business with  
 13 Blackstone in the long-term *if* Blackstone agreed to the Expired License. Accordingly, based on  
 14 the misrepresentations and omissions, and under extreme duress, Blackstone accommodated  
 15 Costco in order to continue doing business with Costco.

16       109. However, despite having coerced Blackstone to enter into the Expired License,  
 17 based on the repeated representations that Costco would continue doing business with Blackstone  
 18 *only if* it executed the Expired License (among other misrepresentations and omissions), Costco  
 19 admitted years-later that it never intended to do further business in its retail clubs (in the United  
 20 States) with Blackstone.

21 **F. In Addition to the Omissions Regarding Technomate/E2/Carpenter and Undue**  
**Duress, Costco Also Made Several Misrepresentations in the Expired License.**

22       110. In its effort to induce Blackstone to execute the Expired License, Costco also made  
 23 several misrepresentations in the agreement itself. For example, Costco "agree[d] that the  
 24 standards for the quality of products ... shall be at least equivalent to the standard of products  
 25 established by Costco, including without limitation QA testing and production protocols  
 26 established by Costco for the manufacture of the Licensed Products." But Costco has admitted  
 27

1 (among other things) that it knew — before the Expired License was executed and unbeknownst  
 2 to Blackstone — that the fans already on the water did *not* comply with the QA testing and  
 3 production protocols, as well as other Costco requirements.

4       111. Among other requirements, Costco also agreed that “Costco shall deliver to  
 5 Blackstone copies of … Costco’s Purchase Orders issued to each of Costco’s vendors for the  
 6 Licensed Products within thirty (30) days of issuance” and “shipping documents for the Licensed  
 7 Products, including commercial invoices and packing lists, within thirty (30) days of receipt by  
 8 Costco.” But only after Blackstone executed the Expired License did Costco admit that it was not  
 9 possible to provide such information. In fact, shortly after Blackstone was forced to execute the  
 10 Expired License, Costco (including through Sierra Lowe and Michelle Rado) admitted during a  
 11 call on January 17, 2019 that Costco was not actually able to comply with its various requirements  
 12 in the Expired License.

13       112. Costco also expressly agreed that “Costco shall provide an item number and UPC  
 14 number for the Licensed Products manufactured by Costco’s vendors … for the Licensed Products  
 15 and shall identify its purchases of Licensed Products as to each such number and Costco’s vendor  
 16 for the Licensed Products.” But before the Expired License was executed, Costco knew that the  
 17 item number and/or UPC number would not be changed on some fans. Costco also knew that that  
 18 its system does not have a way to track when the same item numbers, UPC number, and/or  
 19 purchase order numbers are utilized, despite having reassured Blackstone prior to executing the  
 20 Expired License that they could in fact do so.

21       113. Among other representations and warranties, Costco also “represent[ed] and  
 22 warrant[ed] that, as of the Effective Date of this [License] Agreement, Costco plans to and will be  
 23 the importer of record for the Licensed Products under this [License] Agreement.” But contrary  
 24 to its representations in the Expired License, Costco knew that hundreds of thousands of fans were  
 25 falsely labeled as “Distributed by: Blackstone.”

26       114. Costco also expressly “acknowledge[d] and agree[d] that [Blackstone] … shall

1 have no responsibility for any claims related to product liability, personal injury, defects, customer  
 2 service or other liability related to the sale of the Licensed Products.” But before the Expired  
 3 License was executed, Costco knew that the fans incorrectly included Blackstone’s customer  
 4 service information and warranty cards. Numerous consumers have reported to Blackstone that  
 5 Costco has directed them to call Blackstone rather than the vendor that Costco knew to have  
 6 supplied Costco the falsely-labeled products.

7       115. In response to the repeated notice provided by Blackstone, Costco nonetheless  
 8 continued to sell fans that falsely, improperly, and without authorization included “Distributed by:  
 9 Blackstone,” utilized Blackstone’s customer service email and phone number, and contained  
 10 Blackstone’s warranty cards. Costco was well-aware from the beginning that there were numerous  
 11 problems concerning the use of those items. In its zeal to increase its own profits, and to the  
 12 continued detriment of Blackstone, however, Costco plowed ahead. In fact, shortly after  
 13 Blackstone was forced to execute the Expired License, Costco admitted that it was not actually  
 14 able to comply with its various requirements in the Expired License.

15 **G. During the 2019 Season, Costco Also Misappropriated Blackstone’s Proprietary**  
 16 **Information, Falsely Designated the Origin of Certain Products, and Misrepresented**  
**the Customer Service and Warranty Responsibilities of the Fans.**

17       116. In addition to breaching the 2019 Fan Program Agreement, Costco also  
 18 misappropriated Blackstone’s unique methods and processes, proprietary modeling and formulas,  
 19 and valuable and exclusive know-how.

20       117. For example, Costco conspired with Technomate/E2/Carpenter to use (among other  
 21 of Blackstone’s proprietary information) the Cascade-brand, packaging, product design, pallet  
 22 optimization, pricing, tooling, and manufacturing logistics.

23       118. Among other wrongful conduct, Costco also improperly utilized proprietary and/or  
 24 confidential information regarding Blackstone’s business relationship with DCI/Home Star and  
 25 Mikia, including without limitation Blackstone’s purchase orders for the Blackstone Tower Fans  
 26 and Blackstone’s invoicing information.

119. Additionally, certain of the fans that Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar were also falsely, wrongfully, improperly, and without authorization designated as distributed by Blackstone, listed Blackstone's customer service information, and utilized Blackstone's warranty cards and UPC number.

120. For example, the following false statement was included on the packaging, manuals, and molding of certain fans that have been sold at Costco outlets:

Distributed By:  
Blackstone International Ltd.  
2018 Baltimore Drive  
Baltimore, MD 21244  
USA  
Made in China

121. However, the fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar were *not* “distributed by” Blackstone.

122. Blackstone's customer service phone number and email address was also stamped on the packaging, printed in the user manuals, and embedded on the bottom of the product itself.

123. However, Costco did *not* have any right to use Blackstone customer service information on any of the fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar.

124. The fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar also utilized Blackstone's warranty cards.

125. However, Blackstone does *not* have warranty responsibility for the fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar.

126. In addition, Costco used Blackstone's UPC number on certain of the fans that  
Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar.

127. However, Blackstone never gave Costco permission to use Blackstone's UPC number.

128. Costco's numerous acts of false designation were knowing, intentional, and willful. Costco knowingly and intentionally labeled certain fans as "distributed by" Blackstone. Costco

1      Costco knowingly and intentionally utilized Blackstone's customer service information. Costco  
2      knowingly and intentionally utilized Blackstone's warranty cards. Costco also knowingly and  
3      intentionally utilized Blackstone's UPC number.

4            129. Costco's wrongful and improper conduct has caused significant customer  
5      confusion regarding the origin of certain products, as well as confusion regarding customer service  
6      and warranty responsibilities for the fans.

7            130. For example, Blackstone has received warranty cards from Costco members for  
8      fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar. But  
9      Blackstone has no warranty responsibility for such products and never authorized Costco to sell  
10     products with Blackstone's warranty cards.

11           131. Blackstone has also received complaints through its customer service phone  
12     numbers and customer service email from consumers who purchased fans from Costco that were  
13     sold directly to Costco by Technomate/E2/Carpenter and/or DCI/Homestar. But Blackstone has  
14     no responsibility for such products.

15           132. For example, the following is an email exchange with a consumer who purchased  
16     a fan with the model number MKTF0001, which is a fan sold directly to Costco by  
17     Technomate/E2/Carpenter:

1  
 2 From: [REDACTED]  
 3 Sent: Friday, April 17, 2020 12:27 PM  
 4 To: Customer Service  
 5 Subject: RE: Fan Support  
 6

This is not the best customer service. Thanks for not honoring the warranty and passing the buck and sending the customer on a goose chase. I reached out to E2 limited and they are not able to replace the item since according to them Blackstone did not provide any replacement fans, just limited parts. I absolutely will take this up with Costco and anticipate I'll get much better service and consideration. This further gives me pause to know why companies offer a warranty in the first place if they have no intention of honoring it whether they are a vendor or not. That frankly should not be a concern for a customer who is buying your product.

Sent from [Mail](#) for Windows 10

7 From: [Customer Service](#)  
 8 Sent: Thursday, April 16, 2020 8:42 AM  
 9 To: [REDACTED]  
 Subject: Fan Support

Thank you for contacting Blackstone International. Unfortunately, we are not able to assist with your fan because we are no longer the vendor for this item. Please contact Costco or the store purchased directly to resolve any issue with your fan. The two new vendors are below depending on which PO# is located on the bottom of the base. It would be best to contact Costco and they will provide the correct vendor for your fan to provide support.

11 Thanks

12 Customer Service  
 13 Blackstone International

14 New Vendor: E2 Limited  
[Fansupport@1800acs.com](mailto:Fansupport@1800acs.com)  
 1888-849-4079 phone number

15 HomeStar International  
[Customerservice@home-starltd.com](mailto:Customerservice@home-starltd.com)  
 16 800.571.3429

17 Campaign: Blackstone International Customer Service-English

Question	Answer
FirstName	[REDACTED]
LastName	[REDACTED]
PhoneNumber	[REDACTED]
Email	[REDACTED]

1	Address1	
2	Address2	
3	City	
4	State	
5	ZipCode	
6	CallType	Cascade 40 inch Fan
7	HelpCallerCombo	Yes
8	ModelNumber	MKTF0001
9	NeedReplacement	Yes
10	PONumber	N/A
11	ReasonWhyExist	The caller stated that he has called several times in reference his fan is not working. Urgent.
12	TroubleshootCombo	The Fan is not Turning On (No Power)
13	WhenPurchased	January 2020
14	WherePurchased	Costco

9 Call Result: Issue Not Resolved Needs Follow Up  
 10 ANI: 210-428-3270

11 TeleDirect Call Centers  
[www.teledirect.com](http://www.teledirect.com)

12  
 13  
 14     Such false representations regarding customer service and warranty  
 15 responsibilities, and false designation of origin of the fans, is part of Costco's apparent attempt to  
 16 injure Blackstone and its reputation. For example, the following is an example of another email  
 17 exchange with an angry consumer of a fan Costco did not purchase from Blackstone:

18  
 19       **Sent:** Thursday, June 11, 2020 6:20 PM  
 20       **To:** Customer Service <[customerservice@blackstoneintl.com](mailto:customerservice@blackstoneintl.com)>  
 21       **Cc:** [REDACTED]  
 22       **Subject:** Re: Fan Support  
 23       **Importance:** High

24       This is unacceptable  
 25       The instruction manual specifically states DO NOT return to place of purchase  
 26       This product was ultimately purchased from Blackstone International and should  
 27       honor the warranty. If Blackstone International is no able to replace with the  
 28       warrantied product a replacement should be sent as a substitution  
 29       DO I NEED TO ASK THE BBB TO GET INVOLVED  
 30       please reply ASAP  
 31       Thank you

1 ----- Original Message -----  
 2 From: Customer Service <[customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)>  
 3 To: [REDACTED]  
 4 Sent: Tue, 09 Jun 2020 11:48:32 -0400 (EDT)  
 5 Subject: Fan Support  
 6  
 7  
 8

9 Thank you for contacting Blackstone International. Unfortunately, we are not able to assist with  
 10 your fan because we are no longer the vendor for this item. Please contact  
 11 Costco or the store purchased directly to resolve any issue with your fan or replacement parts. The  
 12 two new vendors are below depending on which PO# is located on the bottom of the base. It would  
 13 be best to contact Costco or the store purchased and they will  
 14 provide the correct vendor for your fan to provide support. If you have any trouble, please request a  
 15 manager to assist you with your fan.

16 Thanks  
 17  
 18 Customer Service  
 19 Blackstone International  
 20  
 21 New Vendor: E2 Limited  
 22  
 23  
 24

25 [Fansupport@1800acs.com](mailto:Fansupport@1800acs.com)  
 26 1888-849-4079 phone number  
 27

28 HomeStar International  
 29 [CustomerService@home-starltd.com](mailto:CustomerService@home-starltd.com)  
 30 800.571.3429

31 **Campaign: Blackstone International Customer Service-English**

Question	Answer
FirstName	[REDACTED]
LastName	[REDACTED]
PhoneNumber	[REDACTED]
Email	[REDACTED]
Address1	[REDACTED]
Address2	[REDACTED]
City	[REDACTED]
State	[REDACTED]
ZipCode	[REDACTED]
CallType	Cascade 40 inch Fan
ComboFanIssue	The caller stated that the oscillation is not working but the light is on.
HelpCallerCombo	Yes
ModelNumber	0001TF40-18
NeedReplacement	Yes
PONumber	006417
	The caller stated that the oscillation is not working but the light is on. He also called on Friday and has not heard back from anyone. Would prefer a call back.
ReasonWhyExist	All Other Issues
TroubleshootCombo	08/2019
WhenPurchased	Costco

28 Call Result: Issue Not Resolved Needs Follow Up  
 29 ANI: 651-644-3040  
 30  
 31

32 TeleDirect Call Centers  
 33  
 34

35 SECOND AMENDED COMPLAINT - 28  
 36 CASE NO. 2:20-CV-00964-TSZ

37 GOLDFARB & HUCK  
 38 ROTH RIOJAS, PLLC  
 39 925 Fourth Avenue, Suite 3950  
 40 Seattle, Washington 98104  
 41 (206) 452-0260

1       134. And the following is yet another example of an email exchange with another angry  
2 consumer of a fan Costco did not purchase from Blackstone:

3       **From:** [REDACTED]  
4       **Sent:** Wednesday, May 5, 2021 4:02:25 PM  
5       **To:** Customer Service <[customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)>  
6       **Subject:** RE: Cascade Fan with remote control

7       Thanks for your reply. It's now out with the rest of the trash along with the garbage.  
8       Will do a media review warning American public about this cheap trash item and your very unethical  
9       company.

10      On May 5, 2021 4:33 AM, Customer Service <[customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)> wrote:

11      Thank you for contacting Blackstone International. Unfortunately, we are not able to assist  
12      with your fan because we are no longer the vendor for this item. Please contact Costco or  
13      the store purchased directly to resolve any issue with your fan or replacement parts. The two  
14      new vendors are below depending on which PO# is located on the bottom of the base or the  
15      fan box. It would be best to contact Costco or the store purchased and they will provide the  
16      correct vendor for your fan to provide support. If you have any trouble, please request a  
17      manager to assist you with your fan.

18      Thanks

19      Customer Service

20      Blackstone International

21      New Vendor: E2 Limited

22      [Fansupport@1800acs.com](mailto:Fansupport@1800acs.com)

23      1888-849-4079 phone number

24      HomeStar International

25      [CustomerService@home-starltd.com](mailto:CustomerService@home-starltd.com)

26      800.571.3429

1  
2  
3 From: [REDACTED]  
4 Sent: Tuesday, May 04, 2021 3:51 PM  
5 To: Customer Service <[customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)>  
6 Subject: Cascade Fan with remote control  
7  
8

9 To whom it may concern,  
10  
11 We have a cascade fan which we purchased a year ago from Costco.  
12 It has worked very well until today. It makes the beep sound (as normal) when it is plugged in but does  
13 nothing else.  
14 I have looked underneath the unit for a serial number etc. but it has none that I can see. I do see though  
15 have a paper sticker saying date of manufacture 2019.  
16  
17 I believe we registered the unit when we purchased it, if so it will be under the name of :-  
18  
19 [REDACTED]  
20  
21 OUR ADDRESS [REDACTED]  
22 [REDACTED]  
23 Phone number [REDACTED]  
24  
25 Please advise, do I take it back to Costco or do you service it.  
26  
27 Thank you

135. Indeed, as evidenced by the substantial number of similar customer complaints  
regarding fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar,  
consumers are clearly confused about the origin of the fans.

28  
29  
30 SECOND AMENDED COMPLAINT - 30  
31 CASE NO. 2:20-CV-00964-TSZ

32  
33  
34  
35 GOLDFARB & HUCK  
36 ROTH RIOJAS, PLLC  
37 925 Fourth Avenue, Suite 3950  
38 Seattle, Washington 98104  
39 (206) 452-0260

1       136. Numerous consumers have also reported to Blackstone that they were directed to  
2 call Blackstone rather than Costco.

3       137. For example, as described in the following email exchange, the customer was  
4 referred to Blackstone to address problems with a fan that Costco did not purchase from  
5 Blackstone:

6       From: [REDACTED]  
7       To: [REDACTED] Customer Service  
8       Subject: Fwd: Costco Shopping History -- [REDACTED]  
9       Date: Tuesday, April 21, 2020 12:59:43 PM  
10      Attachments: Costco Shopping History -- [REDACTED].pdf

---

9       I purchased two Cascade tower fans from costco last year. One of them stopped  
10      working a few weeks back. The customer service at costco suggested that I contact the  
11      manufacturer to see if you can resolve given the product is still under warranty.

12      I am attaching the receipt, I understand it is still under 1 year warranty as of today  
(Purchased on 4/28/19)

13      Can you please help resolve this?

14      Thank you  
[REDACTED]

15      ----- Forwarded message -----  
16      From: [REDACTED] <[REDACTED]@costco.com>  
17      Date: Tue, Apr 21, 2020 at 12:51 PM  
18      Subject: Costco Shopping History -- [REDACTED]  
19      To: [REDACTED]

20      Attached is the receipt request from 4/21/2020.

21      Thank you,

22      --  
23      Membership Services Agent  
24      Corporate Member Service Center  
25      P: [REDACTED] F: [REDACTED]

26       138. Among other serious concerns, this is another example of the reputational damage

1 to Blackstone.

2       139. Blackstone has also received several reports of malfunctioning fans that Costco did  
 3 not purchase from Blackstone, which raise questions about the quality of these products. But  
 4 Blackstone has no responsibility for such malfunctioning fans.

5 **H. After the Expired License was Expired, Costco Also Blatantly Stole Blackstone's**  
**Intellectual Property, Including Infringing Blackstone's Copyrights and Trade Dress,**  
**and Unlawfully Sold (and Continues to Sell) Knock-Offs of Blackstone's Products.**

6       140. In addition to Costco's misconduct for the 2019 season, Costco also infringed  
 7 Blackstone's intellectual property after the Expired License expired.

8       141. As Costco expressly acknowledged and agreed in the Expired License, Blackstone  
 9 owns and has developed federally registered and common law intellectual property, including  
 10 copyright protection and trade dress rights, in connection with (among other intellectual property)  
 11 the design elements, packaging, and package inserts related to Blackstone's products.

12       142. Blackstone's intellectual property was created through extensive time, effort, and  
 13 expense marketing and developing Blackstone's products. And Blackstone has the sole right to  
 14 supply certain products that embody Blackstone's intellectual property, including the Blackstone  
 15 Tower Fan.

16       143. Costco knew or should have known that the Blackstone Tower Fans and Blackstone  
 17 Personal Fans were protected by intellectual property rights belonging to Blackstone. However,  
 18 Costco stole Blackstone's intellectual property and unlawfully sold knock-offs of Blackstone's  
 19 products to consumers.

20       144. For example, Costco conspired with Technomate/E2/Carpenter to intentionally  
 21 utilize Blackstone's Cascade-branded fan as their design base.

22       145. On information and belief, Blackstone's tooling and molds were also utilized to  
 23 manufacture certain of Costco's knock-off fans.

24       146. Costco also conspired with Technomate/E2/Carpenter to misappropriate  
 25 Blackstone's unique methods and processes, proprietary modeling and formulas, and valuable and  
 26

1       exclusive know-how for the knock-off fans for the 2020 season.

2           147. For example, Costco knowingly utilized Blackstone's pallet optimization,  
 3 packaging design requirements, and shipping container logistics for the fans that were ultimately  
 4 labeled as the Sierra Tower Fan.

5           148. Despite Blackstone's ownership of the intellectual property and the fact that the  
 6 Expired License *expired*, Costco has imported for retail sale at least two knock-offs of  
 7 Blackstone's Tower Fan bearing the names "Sierra Tower Fan" and "OmniBreeze Tower Fan."

8           149. Costco's importation, distribution, and/or sale of the Sierra Tower Fan (and the  
 9 enclosed user manual) and OmniBreeze Tower Fan (and enclosed user manual) infringes  
 10 Blackstone's intellectual property, including Blackstone's copyrights, trade dress, and design  
 11 protections.

12           150. Just like Blackstone's "Cascade" model, Costco even used a mountain range in the  
 13 name of its knock-off Sierra Tower Fan.

14           151. Costco has no right to use Blackstone's intellectual property except with  
 15 Blackstone's express written consent or agreement, which Blackstone has not granted to Costco  
 16 for the Sierra Tower Fan or OmniBreeze Tower Fan.

17           152. Costco's infringement of Blackstone's trade dress was knowing, intentional, and  
 18 willful. Costco knowingly and intentionally imported, distributed, and/or sold knock-offs of the  
 19 Blackstone Tower Fan.

20           153. Blackstone's trade dress as embodied in the packaging, overall design, louver  
 21 system, grill, arched top form, control panel layout, control panel and icons, logo application,  
 22 cylindrical stock, base, fit, and finish of the Blackstone Tower Fan, as well as the remote-control  
 23 design including the "circle and cross" layout, control icons, and logo application, have acquired  
 24 secondary meaning, and is not functional.

25           154. Each of the features in Blackstone's trade dress is part of the total image and overall  
 26 appearance of the Blackstone Tower Fan. Blackstone's trade dress in the Blackstone Tower Fan

1 reflects the foregoing elements, but it is not merely those elements. Blackstone's trade dress is  
 2 composed, not of individual elements, but of the overall visual impression that the combination  
 3 and arrangement of those elements creates. That total image and overall appearance is distinctive,  
 4 unique, recognizable, and non-functional. And that trade dress has acquired secondary meaning  
 5 in the minds of consumers throughout the United States, and serves to identify Blackstone as the  
 6 source of the Blackstone Tower Fan.

7       155. Additionally, based on extensive marketing, promotion, and sales throughout the  
 8 United States, Blackstone's trade dress has acquired distinctiveness and enjoys secondary meaning  
 9 among consumers, identifying Blackstone as the source of the fans.

10      156. Blackstone's promotion and sales of its distinctive trade dress has resulted in  
 11 Blackstone's acquisition of valuable, legally protected rights in Blackstone's trade dress, as well  
 12 as considerable customer goodwill.

13      157. Costco's knock-off products have misappropriated Blackstone's trade dress by  
 14 mimicking a combination of several elements of Blackstone's trade dress.

15      158. Costco's importation, distribution, and/or sale of the infringing knock-off fans  
 16 incorporating Blackstone's designs that mimic a combination of several elements of Blackstone's  
 17 trade dress is likely to cause confusion, mistake, or to deceive (and has, in fact, caused confusion,  
 18 mistake, and deceived) consumers as to the affiliation, connection, or association of Costco's  
 19 knock-off fans with Blackstone, or as to the origin, sponsorship, or approval by Blackstone of  
 20 Costco's goods, services, or commercial activities.

21      159. Costco's importation, distribution, and/or sale of the infringing knock-off fans  
 22 incorporating Blackstone's designs that mimic a combination of several elements of Blackstone's  
 23 trade dress unlawfully enables Costco to benefit unfairly from Blackstone's reputation and success,  
 24 thereby giving Costco's infringing knock-off fans sales and commercial value they would not  
 25 otherwise have.

26      160. Blackstone's trade dress includes unique and non-functional aesthetic designs that

1 provide it with a distinctive appearance, despite an increase in manufacturing costs. The  
 2 combination of elements in Blackstone's design is distinctive and serves to identify Blackstone as  
 3 the source of the fans. The design elements are not functional, as demonstrated by the numerous  
 4 alternative designs for competing products.

5       161. For example, in comparing the Blackstone Tower Fan to the Sierra Tower Fan and  
 6 OmniBreeze Tower Fan, Costco has captured the distinctive, non-functional features of the  
 7 Blackstone Tower Fan, which creates (and has, in fact, already created) a likelihood of confusion  
 8 between the Blackstone Tower Fan and Sierra Tower Fan and OmniBreeze Tower Fan.

9       162. The consuming public has come to recognize the Blackstone's trade dress as  
 10 signifying a particular source (*i.e.*, Blackstone). Because Blackstone's trade dress is inherently  
 11 distinctive and/or has secondary meaning or acquired distinctiveness, consumers associate  
 12 Blackstone' trade dress with Blackstone and are confused by the source of knock-off products sold  
 13 by Costco.

14       163. Because of the popularity and success of the Blackstone Tower Fan, its non-  
 15 functional aspects have become distinctive; that is, the appearance of Blackstone Tower Fan  
 16 indicates to consumers that the source and origin of these fans is Blackstone, not competitors or  
 17 others.

18       164. The many non-functional design aspects of the Blackstone Tower Fan, taken  
 19 together as a total product image as Blackstone's trade dress, is distinctive and has acquired  
 20 secondary meaning among the relevant consuming public, including because Blackstone for many  
 21 years has been selling its the Blackstone Tower Fan exclusively, and Blackstone has extensively  
 22 marketed and sold the Blackstone Tower Fan.

23       165. Indeed, Costco's copying of Blackstone's design is easily apparent from a simple  
 24 comparison of the tower fans as depicted below:



13 Blackstone Cascade Fan

13 Blackstone Sunter Fan

13 Costco Sierra Fan

13 Costco OmniBreeze Fan

166. Costco's copying of the Blackstone Tower Fans and their distinctive design elements is creating both the likelihood of confusion and actual confusion in the marketplace. In fact, Blackstone has received numerous consumer complaints and requests for product replacement from consumers who contacted Blackstone's customer service email and/or phone number believing that the Sierra Tower Fan and/or OmniBreeze Tower Fan sold by Costco are actually the Blackstone Tower Fan.

167. The consuming public has come to recognize the Blackstone's trade dress as signifying a particular source, and consumers associate Blackstone' trade dress with Blackstone and are confused by the source of knock-off products sold by Costco, because Blackstone's trade dress is inherently distinctive and/or has secondary meaning or acquired distinctiveness.

168. For example, the following are several examples of consumers who recognized Blackstone's trade dress as signifying Blackstone as the particular source of the product, even

1 though the consumers purchased a Sierra Tower Fan from Costco:

2  
3 From: [REDACTED]  
To: [Customer Service](#)  
4 Subject: Remote not working  
Date: Tuesday, July 07, 2020 6:07:57 AM

---

5 Purchased 2 tower fans model mk-tf002 on 5/30/20 from costco. One of the remotes already  
6 quit working. I've tried 3 brand new 2032 batteries. I've done all your troubleshooting. I  
7 don't want to return entire fan but will have to if I cannot get a replacement remote.

8 Thanks  
[REDACTED]

9 \*Costco order #300522256 ordered 5/30/20

10 From: [REDACTED]  
11 To: [Customer Service](#)  
12 Subject: Need fan replacement  
13 Date: Monday, July 20, 2020 2:00:56 PM

---

14 Last month I bought a Sierra 40-inch Tower Fan Ultra-Quiet. I came home today and found  
15 that it will not adjust speeds. It is barely blowing at a low speed. I would like to request a  
16 replacement fan, being that I have already thrown away all the packaging when I bought it and  
17 found that I was very happy with it. Can you please contact me as to what information you need  
from me?

18 Thank you,  
[REDACTED]

19 This email may contain confidential material and is intended solely for the use of the named  
20 addressee. Access, copying or re-use of the e-mail or any information contained therein by  
21 any other person is not authorized. If you are not the intended recipient please notify the  
22 sender(originator) and delete all copies immediately. The Hamblen County Department of  
23 Education may monitor email to and from our network.

24 From: [REDACTED]  
25 To: [Customer Service](#)  
26 Subject: 49 inch tower fan remote  
27 Date: Monday, October 05, 2020 7:37:17 PM

---

Hello.

I recently purchased the Sierra 40" tower oscillating fan from Costco and the remote just  
stopped working. I tried replacing the battery and it still doesn't work. Should I take the whole  
thing back to Costco or can I get a replacement remote from you?

--  
-[REDACTED]-

The only people for me are the mad ones, the ones who are mad to live, mad to talk, mad to be saved,  
desirous of everything at the same time. -Kerouac

1           From: [REDACTED]  
2           Sent: Tuesday, May 4, 2021 7:10 PM  
3           To: Customer Service <[customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)>  
4           Subject: Fan lights



5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15           Hello,

16           I'm wondering how to turn the lights off on our fan. I attached a picture of it with the lights on. They are very bright at  
17           night time. They used to go off and now we cannot figure it out.

18  
19           From: [REDACTED]  
20           Sent: Sunday, May 9, 2021 8:41:14 PM  
21           To: Customer Service <[customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)>  
22           Subject: Sierra rotating fan

23  
24           Hi,

25           I bought the rotating fan from Costco in June 2020. The unit has begun to wobble from side to side. Is this something  
26           that can be repaired or replaced?

27           I've attached a video of the wobble.

28           Thank you,

29  
30           [REDACTED]

1       **From:** [REDACTED]  
2       **Sent:** Monday, May 24, 2021 8:18:55 PM  
3       **To:** Customer Service <[customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)>  
4       **Subject:** Sierra ITM. /ART. 1371093

5           Hello,

6           Can you tell me the size of the screws that come with the Sierra tower fan. I did not see them in the box and would like  
7           to know what I need to purchase to replace them.

8           Thanks,  
9           [REDACTED]

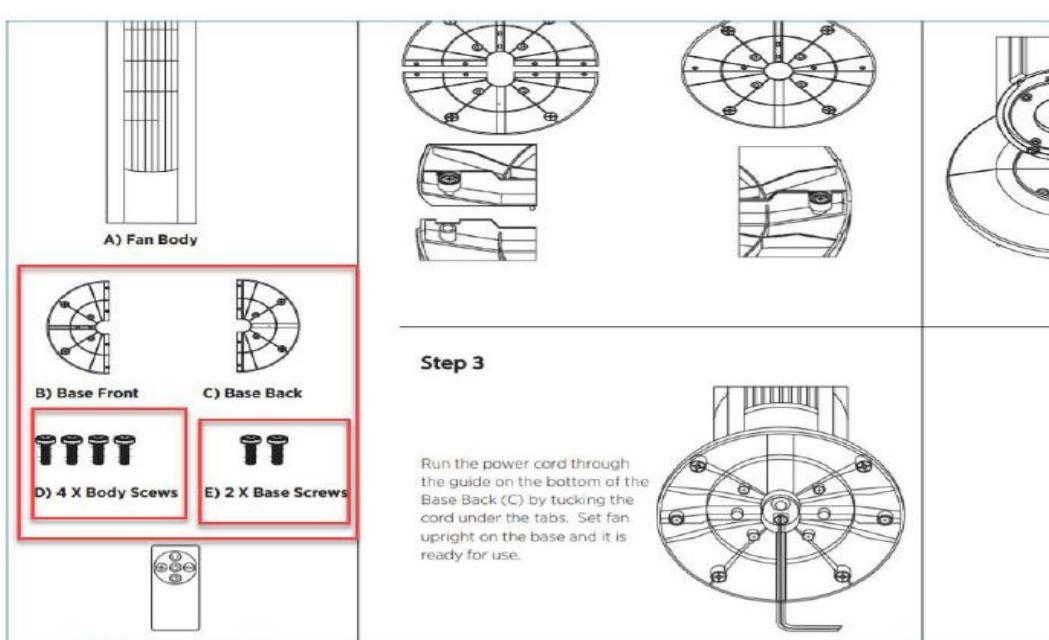
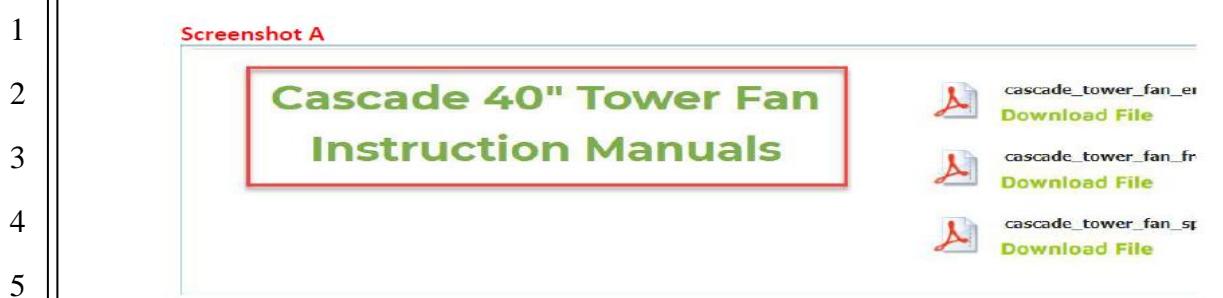
10          169. In fact, because Blackstone's trade dress is inherently distinctive and/or has  
11          secondary meaning or acquired distinctiveness, consumers easily confuse the Blackstone's  
12          Cascade-branded fan with Costco's knock-off Sierra Tower Fan, as illustrated by the following  
13          email from a confused consumer:

14       **From:** [REDACTED]  
15       **Sent:** Friday, June 25, 2021 11:50 AM  
16       **To:** Customer Service <[customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)>  
17       **Cc:** [REDACTED]  
18       **Subject:** Cascade 40" Tower Fan - issue

19           Greetings,

20           Hope this message finds you well.  
21           I purchase the SIERRA 40' tower fan from Costco and the pack of screws is missing (See  
22           highlighted boxes in screenshot B below).  
23           I like the fan and I would rather not return it if I can get the screws to solve this issue.  
24           Would you please provide me with a set of screws to screw the fan to the base or let me know  
25           the size of the screws since this info is not reflected on the manual.

26           Thank you,  
27           [REDACTED]



170. Similarly, because consumers recognize Blackstone's trade dress as signifying Blackstone as the particular source of the product, consumers assume that the OmniBreeze Tower Fan is also a Blackstone product.

171. For example, the following are several examples of consumers who recognized Blackstone's trade dress as signifying Blackstone as the particular source of the product, even though the consumers purchased a OmniBreeze Tower Fan from Costco:

1       **From:** [REDACTED]  
2       **Sent:** Tuesday, November 8, 2022 8:26 PM  
3       **To:** Customer Service  
4       **Subject:** Omnidbreeze 40" tower fan lock nut

5  
6       Hello, I purchased an Omnidbreeze 40" tower fan, however did not receive the lock nut that goes on the bottom  
7       that attaches and holds the fan to the base. Is there any way I could get that part sent to me?  
8       Thank you for your time.  
9       Sent from my iPhone

10  
11      **From:** [REDACTED]  
12      **Sent:** Tuesday, January 4, 2022 10:11 AM  
13      **To:** Customer Service <customerservice@blackstone ltd.com>  
14      **Subject:** Warranty issue on fan  
15      Hello,  
16      I purchased an OmniBreeze Fan at Costco on May 3, 2021 (while it was on sale) for \$29.99.  
17      The motor has started to fail and is making a VERY loud noise rendering the fan unusable.  
18      Until this started, it was a great fan. But this has rendered it unusable. I would like to have this replaced or my money  
19      refunded, please.  
20      The sales receipt is attached.  
21      [REDACTED]

1 From: [REDACTED]  
2 Sent: Sunday, November 6, 2022 12:47 PM  
3 To: Customer Service <customerservice@blackstoneltd.com>  
4 Subject: Re: warranty

5 Can you replace under warranty?  
6

7 On Sun, Nov 6, 2022 at 10:46 [REDACTED] wrote:  
8 | I bought a fan 8 months ago and the returns springs for the buttons broke.  
9



10  
11 From: [REDACTED]  
12 Sent: Thursday, October 27, 2022 4:27 PM  
13 To: Customer Service  
14 Subject: Costco OmniBreeze 40" Tower Fan buzzing  
15

16 I've had this fan from Costco for about 5 months and it is making a buzzing vibration noise at econ, low and medium  
17 speed and it feels like they are all blowing very faintly. Only the high speed setting is operating properly. Do you know  
18 what the issue is and is there some way to correct it? Or should I return the unit to Costco?  
19

20 Thank you.  
21

22 [REDACTED]  
23  
24 -  
25

1  
2 From: [REDACTED]  
3 Sent: Saturday, August 27, 2022 12:46 AM  
4 To: Customer Service <customerservice@blackstoneltd.com>  
5 Subject: Omnidbreeze Tower Fan

6 Good Evening,  
7  
8 I just purchased the Omnidbreeze Tower Fan Model DC2018 from Costco on August 16. I  
9 absolutely loved it and threw away the box thinking I was going to keep it. All of a  
10 sudden today, I turned the fan on and it's making this terrible high pitch buzzing noise  
11 that it never made before. It's so bad that I can't sleep with it on because of how loud it  
12 is. I unfortunately cannot take it back to Costco because I do not have the box anymore.  
13 Is there anything you guys can assist me with in fixing the fan?

14 Thank you,  
15 [REDACTED]

16 Sent from my iPhone

17 172. In fact, because Blackstone's trade dress is inherently distinctive and/or has  
18 secondary meaning or acquired distinctiveness, consumers easily confuse the Blackstone's  
19 Cascade-branded fan with Costco's knock-off OmniBreeze Tower Fan, as illustrated by the  
20 following email from a confused consumer:

21 From: [REDACTED]  
22 Sent: Wednesday, January 12, 2022 10:03 AM  
23 To: Customer Service <customerservice@blackstoneltd.com>  
24 Subject: Broken Tower fan replacement request  
25 Hello there,  
26 I purchased two tower fans from Costco and they came home delivered at different days. First delivery was good, but  
27 second delivery was wracked.  
The parts are floating around within box as box itself did take a brunt of shipping conditions abuse.

Attaching the picture of how it is delivered and the receipt of Costco purchase order.



I would like to have broken one replaced. Can you please arrange the shipment of replacement of broken tower fan.

Shipping address would be same.  
[REDACTED]

Thanks much,  
[REDACTED]

Sent from my iPhone

1       173. Frustrated by the inability to reach Costco or Costco's manufacturers, other  
 2 consumers have searched online for Blackstone's customer service number and sought out service  
 3 from Blackstone for fans Costco did not purchase from Blackstone, further evidencing that  
 4 consumers associate the distinctive design and/or design elements with Blackstone as the source  
 5 of the product.

6       174. In addition, the manuals associated with the Sierra Tower Fan also copy directly,  
 7 in significant part, from the Copyrighted Works. For example, text and images contained in the  
 8 Copyrighted Works are the same and/or substantially similar as the manuals associated with the  
 9 Sierra Tower Fan.

10      175. The manuals associated with the OmniBreeze Tower Fan also copy, in significant  
 11 part, directly from the Copyrighted Works. For example, text and images contained in the  
 12 Copyrighted Works are the same and/or substantially similar as the manuals associated with the  
 13 OmniBreeze Tower.

14      176. Costco was previously made aware of Blackstone's copyrights to the Copyrighted  
 15 Works. And Blackstone has repeatedly requested that Costco stop its blatant infringement of  
 16 Blackstone's intellectual property.

17      177. For example, on April 23, 2020, Blackstone sent Costco a cease and desist letter  
 18 wherein Blackstone (*inter alia*) demanded that Costco “[c]ease and desist from all unauthorized  
 19 use of the Blackstone Intellectual Property including, but not limited to, ceasing the manufacture,  
 20 distribution, importation, sale, and/or sale for importation of the Sierra Tower Fan, Blackstone  
 21 Personal Fan, the Blackstone Tower Fan, or any products confusingly similar to the Blackstone  
 22 Products.” Thus, Blackstone requested that Costco stop infringement of Blackstone's intellectual  
 23 property, including concerning the Copyrighted Works and violations of the Lanham Act.

24      178. Blackstone specifically advised Costco that “Blackstone owns trademark, trade  
 25 dress, and copyright protection for the packaging and manuals; and trademark and trade dress  
 26 protection for the overall design, the louver system, grill, arched top form, control panel layout,

1 control panel and icons, logo application, fit, and finish of the Blackstone Products, including the  
 2 Cascade Tower Fan a/k/a Blackstone Tower Fan.”

3       179. Blackstone specifically advised Costco that “Blackstone also owns trademark and  
 4 trade dress protection for the remote-control design including the ‘circle and cross’ layout, control  
 5 icons, and logo application.”

6       180. Blackstone provided Costco with a list of Blackstone’s intellectual property,  
 7 including “Blackstone’s name and logo,” “Cascade brand name and logo,” “Cascade proprietary  
 8 alphabet,” “Trademark Registration Number 322542,” “Pending Trademark Application Serial  
 9 Number 88216424,” “Copyright Registration Number TX0008690544,” “Copyright Registration  
 10 Number TX0008696259,” and “Copyright Registration Number TXU002132551.”

11       181. Blackstone also described Blackstone’s trade dress.

12       182. Blackstone warned that “[t]he unauthorized use of the Blackstone Intellectual  
 13 Property or confusingly similar variations of the Blackstone Products is a violation of federal and  
 14 state trademark, trade dress, copyright, false advertising, unfair competition, and unfair trade  
 15 practice laws.”

16       183. Blackstone also warned that “[t]he unauthorized use of Blackstone Intellectual  
 17 Property would cause injury to Blackstone including lost sales, confusion as to the source of the  
 18 infringing products, and an improper association with Blackstone that serves to dilute the goodwill  
 19 that Blackstone has developed in the market.”

20       184. Blackstone also “reserve[d] the right to seek actual and statutory damages, punitive  
 21 damages, enhanced damages, attorneys’ fees, costs, injunctions, exclusion and cease-and-desist  
 22 orders, or any other remedy to which Blackstone is entitled as a result of Costco’s actions.”

23       185. In addition, on May 22, 2020, Blackstone sent Costco another letter wherein  
 24 Blackstone (*inter alia*) described that “Costco’s copying of Blackstone’s tower fans and their  
 25 distinctive design elements is creating both the likelihood of confusion and actual confusion in the  
 26 marketplace.”

186. Blackstone also described that it had “received consumer complaints and requests for product replacement from consumers who contact Blackstone’s customer service email and phone number believing that the Sierra fans sold by Costco are actually Blackstone’s tower fans.”

187. Costco has the power to cease distribution and/or sale of the Sierra Tower Fan and OmniBreeze Tower Fan, but has refused to cease the distribution and/or sale of the Sierra Tower Fan or OmniBreeze Tower Fan.

## **V. CAUSES OF ACTION**

**A. First Claim: Breach of Contract (2019 Fan Program Agreement)**

188. Blackstone re-alleges and incorporates by reference each of the allegations in the above paragraphs.

189. Blackstone entered a valid and enforceable 2019 Fan Program Agreement with Costco, pursuant to which Costco agreed to purchase from Blackstone approximately 2.5 million Blackstone Tower Fans and in excess of 500,000 “2-Packs” of Blackstone Personal Fans for the 2019 season.

190. Costco issued purchase orders to Blackstone.

191. In addition, the agreement between Costco and Blackstone is also evidenced by the course of dealing, course of conduct, and/or course of performance between the parties during their more than 15-year relationship.

192. To the extent not frustrated or precluded by Costco' misconduct, Blackstone fully performed under the 2019 Fan Program Agreement, and/or has been excused from further performance by Costco's material breaches.

193. Through its wrongful conduct described above, Costco materially breached the 2019 Fan Program Agreement, including by failing and refusing to purchase 2.5 million Blackstone Tower Fans and a half a million “2-Packs” of Blackstone Personal Fans from Blackstone; engaging and purchasing Blackstone’s products through Technomate/E2/Carpenter and/or directly from DCI/Home Star, Mikia, and/or E2; improperly retaining funds belonging to

1 Blackstone; charging against Blackstone's vendor account; withholding and/or directing the  
 2 withholding of funds; deducting against amounts owed to Blackstone for product that was not sold  
 3 to Costco by Blackstone; and failing to pay Blackstone all amounts due under the 2019 Fan  
 4 Program Agreement.

5       194. As a direct and proximate result of Costco's breaches, Blackstone has suffered  
 6 substantial damages, in an amount to be proven.

7 **B. Second Claim: Breach of Implied Covenant of Good Faith and Fair Dealing**

8       195. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 9 above paragraphs.

10      196. A covenant of good faith and fair dealing is implied in every contract.

11      197. Costco, therefore, owed Blackstone a duty of good faith and fair dealing.

12      198. Through its wrongful conduct described above, Costco breached its duties to  
 13 Blackstone and frustrated the purpose of Costco's agreement with Blackstone, including by  
 14 engaging and purchasing Blackstone's products through Technomate/E2/Carpenter and/or directly  
 15 from DCI/Home Star, Mikia, and/or E2; and improperly retaining funds belonging to Blackstone,  
 16 charging against Blackstone's vendor account, withholding and/or directing the withholding of  
 17 funds, and deducting against amounts owed to Blackstone for product that was not sold to Costco  
 18 by Blackstone.

19      199. As a direct and proximate result of Costco's breaches, Blackstone has suffered  
 20 substantial damages, in an amount to be proven.

21 **C. Third Claim- Fraudulent Inducement, Fraudulent Concealment, Fraud, and**  
**Intentional Misrepresentation**

22      200. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 23 above paragraphs.

24      201. Costco made numerous misrepresentations, half-truths, and omissions, including  
 25 several representations of existing fact (and omissions) regarding its dealings with  
 26 Technomate/E2/Carpenter, cutting Blackstone out, and obligations in the Expired License.  
 27

1       202. Costco also defrauded Blackstone by failing to disclose and making misleading and  
 2 false statements of material fact including, but not limited to (a) Costco's failure to disclose its  
 3 contact, relationship, and plans with Technomate/E2/Carpenter; (b) Costco's false representations  
 4 that it would continue to do business with Blackstone going forward; and (c) that Costco had the  
 5 ability to and would adhere to its obligations under the Expired License.

6       203. For example, Costco affirmatively misrepresented that it was supposedly  
 7 contracting factory direct with Mikia, and omitted that it was actually dealing with  
 8 Technomate/E2/Carpenter.

9       204. Costco also engaged in half-truths that the so-called "very reputable vendor" was  
 10 merely a "conduit" of information, rather than competitors who were actively seeking to (and did)  
 11 supplant Blackstone.

12       205. Costco concealed that it already entered into agreements with  
 13 Technomate/E2/Carpenter *before* Blackstone was forced to execute the Expired License.

14       206. Costco also failed to disclose the fact that, *before* Blackstone was forced to execute  
 15 the Expired License, Costco had already issued purchase orders to Technomate/E2/Carpenter and  
 16 was already shipping Blackstone's fans.

17       207. Moreover, Costco misled Blackstone that the Expired License was merely a "one-  
 18 off" solution to a short-term problem, and that Costco would continue doing business with  
 19 Blackstone in the long-term *if* Blackstone agreed to the Expired License.

20       208. Costco omitted that it was planning to cut Blackstone out completely.

21       209. Costco also demanded that Blackstone be transparent and lay all its cards on the  
 22 table, while simultaneously concealing that it was dealing behind Blackstone's back with  
 23 Technomate/E2/Carpenter.

24       210. Costco's representations that it was engaging factory direct with Mikia were false.  
 25 Costco's representations that it was merely pursuing a short-term "one-off" solution were also  
 26 false. And when Costco represented to Blackstone that it was working with Mikia, its omission

1 of the other key players (Technomate, E2, and Carpenter) gave the false impression that Costco  
 2 was *not* working with such competitors of Blackstone.

3 211. Among other misrepresentations, half-truths, and omissions, Costco also made  
 4 several misrepresentations in the Expired License. For example, Costco misrepresented that the  
 5 standards for the products would be based on established “QA testing and production protocols,”  
 6 but Costco failed to disclose that the fans already “on the water” did *not* comply. Costco also  
 7 made misrepresentations regarding item numbers, UPC numbers, and purchase orders. And  
 8 Costco concealed that the item and UPC numbers could not be changed on approximately 340,000  
 9 fans, and failed to disclose that its system lacked the required tracking. Costco also concealed that  
 10 hundreds of thousands of fans were falsely labeled as “Distributed by: Blackstone.” In addition,  
 11 Costco made misrepresentations regarding Blackstone’s customer service information and  
 12 warranty cards.

13 212. Costco knew the numerous misrepresentations, half-truths, and omissions were  
 14 false at the time they were made and made them with actual malice, improper motive, and/or with  
 15 the intent of injuring Blackstone, to steal its business, improperly appropriating the profits as its  
 16 own, and fraudulently inducing Blackstone into engaging in the actions discussed above, including  
 17 execution of the Expired License.

18 213. For example, Costco knew that it was dealing with Technomate/E2/Carpenter.  
 19 Indeed, since at least November 5, 2018, Costco knew that Technomate and Carpenter were  
 20 spearheading the attempt to supplant Blackstone and had already improperly obtained  
 21 Blackstone’s purchase orders for the 2019 fan program.

22 214. Costco knew that the so-called “very reputable vendor” was not merely a “conduit”  
 23 of information.

24 215. Costco knew that it already entered into agreements with  
 25 Technomate/E2/Carpenter *before* Blackstone was forced to execute the Expired License. Costco  
 26 also knew that, *before* Blackstone was forced to execute the Expired License, Costco had already  
 27

1 issued purchase orders to Technomate/E2/Carpenter and was already shipping Blackstone's fans.

2       216. Although Costco repeatedly threatened that Costco would continue doing business  
 3 with Blackstone only if Blackstone executed the Expired License, Costco knew that it never  
 4 intended to do further business with Blackstone.

5       217. Costco also knew the truth about its own intentions and capabilities.

6       218. Costco's numerous misrepresentations, half-truths, and omissions were material.  
 7 For example, Costco recently admitted that the involvement of Technomate/E2/Carpenter was  
 8 *material* to Costco. Indeed, Costco proclaimed it was shocking when it allegedly learned of  
 9 Blackstone utilizing two factories, even though Costco did already know well in advance about  
 10 both Mikia and DCI/Home Star.

11       219. Moreover, Blackstone repeatedly asked Costcto about who was involved.  
 12 Blackstone also questioned the identity of the vendor who contacted Costco, and Blackstone  
 13 expressly informed Costco that "the identity of the other vendor is material to Blackstone's  
 14 participation in the program." The reasons are obvious: Blackstone's name and valuable  
 15 intellectual property were being utilized for the 2019 fans, effectively placing Blackstone's  
 16 reputation in the market at stake. Blackstone had every right to know what entities were using  
 17 those assets. Indeed, Costco repeatedly declared that transparency in its manufacturing and supply  
 18 chain is important to Costco to protect its reputation. The same is true for Blackstone.

19       220. The distinction between who Costco represented was involved (Mikia) and who  
 20 was actually involved (Technomate, E2, and Carpenter) was also inherently material. Mikia was  
 21 a factory that was known to Blackstone and had been manufacturing Blackstone products for  
 22 several years. Conversely, Technomate/E2/Carpenter are competitors. Costco falsely represented  
 23 to Blackstone that its purported factory direct transaction with Mikia was a "one-off" that arose by  
 24 happenstance from the alleged billing dispute between Mikia and Blackstone. But what was really  
 25 happening was very different: Technomate, a competitor to Blackstone, was attempting to muscle  
 26 in on Blackstone's entire business model. And similarly, E2 was formed for the specific purpose

1 of stealing Blackstone's business with Costco. Technomate and E2 were also employing  
 2 Carpenter, whose career is focused on hawking consumer products from Blackstone's competitors  
 3 to Costco. In other words, it would have been highly material to Blackstone to know that by  
 4 executing the Expired License, it was effectively handing over its business to competitors (which  
 5 was borne out by what ultimately happened with the 2020 fan program).

6 221. The fact that Costco knew that it could not perform its obligations under the Expired  
 7 License was also material. In addition, it was material for Blackstone to know that Costco was  
 8 dealing with Technomate/E2/Carpenter behind Blackstone's back and that Costco was cutting  
 9 Blackstone out.

10 222. Costco made the numerous misrepresentations, half-truths, and omissions, and  
 11 concealed its fraud, for the purpose of defrauding Blackstone and inducing Blackstone to continue  
 12 discussions, execute the Expired License, and not pursue other business with the intent that Costco  
 13 could leverage Blackstone.

14 223. Blackstone specifically inquired about the vendor involved, but was falsely  
 15 informed that it was merely the "conduit" of information.

16 224. Costco's intent is also evidenced by its external representations to Blackstone. For  
 17 example, internally Costco referenced E2 as both the vendor and factory. Costco also recently  
 18 admitted that Technomate/E2/Carpenter were involved the whole time and they frequently  
 19 communicated with Carpenter, as an agent of Technomate and E2. In its external communications  
 20 with Blackstone, however, Costco carefully avoided any mention of Technomate, E2, or  
 21 Carpenter. And Costco was specific in its false representations that it was engaging factory direct  
 22 with Mikia.

23 225. Costco also intended that Blackstone rely on the representations in the Expired  
 24 License.

25 226. Similarly, Costco's threats that Blackstone needed to comply with Costco's  
 26 demands if it ever wanted to walk through Costco's doors again were also obviously intended to  
 27

1 induce reliance by Blackstone.

2       227. Blackstone, to its detriment, reasonably relied on Costco's false representations and  
 3 omissions. Costco misrepresented that it was engaging factory direct with Mikia, while concealing  
 4 that it was dealing directly with Technomate/E2/Carpenter. Among other misrepresentations and  
 5 omissions, Blackstone relied on Costco's misrepresentations and omissions that it was engaging  
 6 factory direct with Mikia. Blackstone also relied on Costco's representations in the Expired  
 7 License, as well as the representations that this was a "one-off."

8       228. Costco never disclosed that it was dealing directly with Technomate/E2/Carpenter.  
 9 Costco also failed to disclose that it had actually contracted with E2, a newly-created affiliate of  
 10 Technomate, who was also "represented" by Carpenter. Blackstone was also ignorant of the fact  
 11 that Costco was incapable of performance of its obligations under the Expired License. Nor could  
 12 Blackstone have known that Costco was dealing with Technomate/E2/Carpenter behind  
 13 Blackstone's back and not planning to do business with Blackstone.

14       229. Blackstone also had no means to independently verify information uniquely within  
 15 Costco's purview, and which information Costco continuously withheld from Blackstone, such as  
 16 which entities Costco was contracting with, and whether Costco could follow through on its own  
 17 commitments. In addition, Blackstone reasonably relied on Costco's representations (and non-  
 18 disclosures) based on the parties' long and successful relationship, and Costco's touted  
 19 commitment to respect its suppliers and act with transparency.

20       230. Blackstone was induced to continue discussions and/or to do business with Costco,  
 21 and Blackstone was induced into the Expired License.

22       231. Blackstone never would have signed the Expired License knowing the material  
 23 information that has finally been revealed to Blackstone.

24       232. Blackstone has also suffered harm, significant injury, and substantial damages.

25       233. Costco's fraud is further described in the briefing on arbitrability before the  
 26 arbitrator, including Respondent/Counter-Claimant Blackstone International, Ltd.'s Opening Brief

1      Concerning Arbitrability, Declaration of John F. Black in Support of Respondent/Counter-  
 2      Claimant Blackstone International, Ltd.’s Opening Brief Concerning Arbitrability and attached  
 3      exhibits, Declaration of Christopher M. Huck in Support of Respondent/Counter-Claimant  
 4      Blackstone International, Ltd.’s Opening Brief Concerning Arbitrability and attached exhibits,  
 5      Respondent/Counter-Claimant Blackstone International, Ltd.’s Reply Brief Concerning  
 6      Arbitrability, Supplemental Declaration of John F. Black in Support of Respondent/Counter-  
 7      Claimant Blackstone International, Ltd.’s Reply Brief Concerning Arbitrability and attached  
 8      exhibits, and Supplemental Declaration of Christopher M. Huck in Support of  
 9      Respondent/Counter-Claimant Blackstone International, Ltd.’s Opening Brief Concerning  
 10     Arbitrability and attached exhibits, all of which is incorporated herein by reference.

11        234. As a direct and proximate result of Costco’s fraud, Blackstone is entitled to  
 12     rescission of the Expired License and, or in the alternative, damages in an amount to be proven.

13        **D. Fourth Claim- Negligent Misrepresentation**

14        235. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 15     above paragraphs.

16        236. Costco made representations and failed to disclose material information that guided  
 17     Blackstone in its business relationships, including with the manufacturers and Costco. For  
 18     example, among other misrepresentations, half-truths, and omissions, Costco (a) failed to disclose  
 19     its contacts, relationship, and plans with Technomate/E2/Carpenter; (b) falsely represented that  
 20     it would continue to do business with Blackstone going forward; and (c) misrepresented that it had  
 21     the ability to and would adhere to its obligations under the Expired License.

22        237. Costco misrepresented that it was supposedly contracting factory direct with Mikia,  
 23     and omitted that it was actually dealing with Technomate/E2/Carpenter. Costco also engaged in  
 24     half-truths that the so-called “very reputable vendor” was merely a “conduit” of information, rather  
 25     than competitors who were actively seeking to (and did) supplant Blackstone. Costco concealed  
 26     that it already entered into agreements with Technomate/E2/Carpenter *before* Blackstone was

1 forced to execute the Expired License. Costco also failed to disclose the fact that, *before*  
 2 Blackstone was forced to execute the Expired License, Costco had already issued purchase orders  
 3 to Technomate/E2/Carpenter and was already shipping Blackstone's fans. Costco misled  
 4 Blackstone that the Expired License was merely a "one-off" solution to a short-term problem, and  
 5 that Costco would continue doing business with Blackstone in the long-term *if* Blackstone agreed  
 6 to the Expired License. Costco omitted that it was planning to cut Blackstone out completely.  
 7 Costco also demanded that Blackstone be transparent and lay all its cards on the table, while  
 8 simultaneously concealing that it was dealing behind Blackstone's back with  
 9 Technomate/E2/Carpenter.

10       238. Among other misrepresentations, half-truths, and omissions, Costco also made  
 11 several misrepresentations in the Expired License. For example, Costco misrepresented that the  
 12 standards for the products would be based on established "QA testing and production protocols,"  
 13 but Costco failed to disclose that the fans already "on the water" did *not* comply. Costco also  
 14 made misrepresentations regarding item numbers, UPC numbers, and purchase orders. And  
 15 Costco concealed that the item and UPC numbers could not be changed on approximately 340,000  
 16 fans, and failed to disclose that its system lacked the required tracking. Costco also concealed that  
 17 hundreds of thousands of fans were falsely labeled as "Distributed by: Blackstone." In addition,  
 18 Costco made misrepresentations regarding Blackstone's customer service information and  
 19 warranty cards.

20       239. Costco knew or should have known that the information was supplied to guide  
 21 Blackstone in its business transactions. For example, the involvement of  
 22 Technomate/E2/Carpenter was material to Costco. Blackstone also repeatedly asked Costco  
 23 about who was involved. Blackstone also questioned the identity of the vendor who contacted  
 24 Costco, and Blackstone expressly informed Costco that "the identity of the other vendor is material  
 25 to Blackstone's participation in the program." Costco was also required to make certain  
 26 representations and agree to certain obligations in the Expired License.

1       240. Costco was negligent in obtaining or communicating the false information and  
 2 omissions. For example, Costco knew that it was dealing with Technomate/E2/Carpenter. Indeed,  
 3 since at least November 5, 2018, Costco knew that Technomate and Carpenter were spearheading  
 4 the attempt to supplant Blackstone and had already improperly obtained Blackstone's purchase  
 5 orders for the 2019 fan program. Costco knew that the so-called "very reputable vendor" was not  
 6 merely a "conduit" of information. Costco knew that it already entered into agreements with  
 7 Technomate/E2/Carpenter *before* Blackstone was forced to execute the Expired License. Costco  
 8 also knew that, *before* Blackstone was forced to execute the Expired License, Costco had already  
 9 issued purchase orders to Technomate/E2/Carpenter and was already shipping Blackstone's fans.

10      241. Although Costco repeatedly threatened that Costco would continue doing business  
 11 with Blackstone only if Blackstone executed the Expired License, Costco knew that it never  
 12 intended to do further business with Blackstone. Costco also knew the truth about its own  
 13 intentions and capabilities.

14      242. Blackstone, to its detriment, reasonably relied on Costco's misrepresentations and  
 15 omissions. For example, Costco misrepresented that it was engaging factory direct with Mikia, while  
 16 concealing that it was dealing directly with Technomate/E2/Carpenter. Among other  
 17 misrepresentations and omissions, Blackstone relied on Costco's misrepresentations and  
 18 omissions that it was engaging factory direct with Mikia. Blackstone also relied on Costco's  
 19 representations in the Expired License, as well as the representations that this was a "one-off."

20      243. Costco never disclosed that it was dealing directly with Technomate/E2/Carpenter.  
 21 Costco also failed to disclose that it had actually contracted with E2, a newly-created affiliate of  
 22 Technomate, who was also "represented" by Carpenter. Blackstone was also ignorant of the fact  
 23 that Costco was incapable of performance of its obligations under the Expired License. Nor could  
 24 Blackstone have known that Costco was dealing with Technomate/E2/Carpenter behind  
 25 Blackstone's back and not planning to do business with Blackstone.

26      244. Blackstone also had no means to independently verify information uniquely within  
 27

1      Costco's purview, and which information Costco continuously withheld from Blackstone, such as  
 2      which entities Costco was contracting with, and whether Costco could follow through on its own  
 3      commitments. In addition, Blackstone reasonably relied on Costco's representations (and non-  
 4      disclosures) based on the parties' long and successful relationship, and Costco's touted  
 5      commitment to respect its suppliers and act with transparency.

6            245. As a direct and proximate result of Costco's negligent misrepresentations,  
 7      Blackstone has suffered damages in an amount to be proven.

8      **E. Fifth Claim- Tortious Interference (Contractual Relations/Economic**  
 9      **Expectancy/Business Relationships)**

10     246. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 11     above paragraphs.

12     247. Blackstone possessed a contractual relationship with the factories, including  
 13     DCI/Home Star.

14     248. Blackstone entered into valid and enforceable agreements with the factories,  
 15     including 2018 Maryland Contract, pursuant to which DCI/Home Star (and Mikia) agreed, among  
 16     other things, that they would manufacture and sell the Blackstone Tower Fans to Blackstone for  
 17     Blackstone to supply to Costco for the 2019 Fan Program Agreement.

18     249. Costco knew about Blackstone's agreements with DCI/Home Star and Mikia, and  
 19     knowingly and intentionally interfered with Blackstone's contractual relationships.

20     250. Through its wrongful conduct described above, Costco acted intentionally,  
 21     willfully, maliciously, and in bad faith to interfere with Blackstone's agreements with DCI/Home  
 22     Star (and Mikia) by, among other things, secretly communicating directly with  
 23     Technomate/E2/Carpenter and, instead of honoring the 2019 Fan Program Agreement with  
 24     Blackstone by refusing to deal directly with Technomate/E2/Carpenter, conspiring with  
 25     Technomate/E2/Carpenter behind Blackstone's back and tortiously interfering with Blackstone's  
 26     contractual relationships with the factories.

27     251. Costco committed these intentional, malicious, and willful acts for the improper

1 and wrongful purpose of tortuously interfering with Blackstone's agreements with DCI/Home Star  
 2 (and Mikia), unfairly competing with Blackstone, and harming Blackstone without justification.

3 252. Blackstone also possessed a prospective economic advantage, including in relation  
 4 to its business relationships with the factories.

5 253. Costco knowingly and intentionally interfered with Blackstone's economic  
 6 expectancy.

7 254. Costco acted intentionally, willfully, maliciously, and in bad faith to interfere with  
 8 and cause damage to Blackstone's business relationship with DCI/Home Star (and Mikia) and  
 9 other manufacturers, as well as other retailers.

10 255. Costco also improperly encouraged, caused, and/or aided in DCI/Home Star's  
 11 wrongful pursuit of baseless claims against Blackstone.

12 256. Costco's tortuous interference with Blackstone's relationships with manufacturers  
 13 and other retailers has damaged Blackstone by injuring its ability to have Blackstone's products  
 14 manufactured by other factories in China.

15 257. Costco's conduct was wrongful both as to purpose and means. Costco acted out of  
 16 the wrongful purpose and used wrongful means in an attempt to destroy Blackstone's business and  
 17 improperly appropriate all resulting profits.

18 258. Costco's intentional interference with Blackstone's agreements has also had an  
 19 adverse financial impact on Blackstone's current and future business operations.

20 259. Costco's intentional and willful acts were calculated and designed to damage  
 21 Blackstone, harm its business relationship built over many years, and deny Blackstone its profits.

22 260. Costco committed these intentional and willful acts for the improper and wrongful  
 23 purpose of unfairly competing and harming Blackstone without justification.

24 261. Costco interfered with Blackstone's contracts, business relationships, and  
 25 economic expectancy in an attempt to destroy Blackstone's business and improperly appropriate  
 26 all resulting profits.

1       262. Blackstone was also forced to execute the Expired License because of Costco's  
 2 improper threats (and other misconduct) that left Blackstone with no reasonable alternative. In  
 3 fact, Blackstone was under extreme duress, feeling like it had a gun to its head, no choice, and that  
 4 it was being forced to sign the Expired License.

5       263. For example, Costco's improper (and extraordinary) threats began in the first  
 6 moments of what should have been a supportive call between long-time business partners. Instead  
 7 of "respecting" its supplier, Costco dictated compliance with Costco's demands under threat of  
 8 never again walking "through the doors" at Costco.

9       264. Costco specifically threatened Blackstone that its failure to agree to Costco's  
 10 demands regarding the terms of the Expired License would have adverse effects on the relationship  
 11 between Costco and Blackstone. Costco also made its demands to Blackstone as threatened "deal-  
 12 breakers."

13       265. Costco also threatened Blackstone that it would proceed "with or without"  
 14 Blackstone. Costco also increased the pressure on all fronts, including withholding monies due to  
 15 Blackstone on prior sales programs and threatening to cancel upcoming sales programs. In  
 16 addition to exploiting Blackstone, it was Costco that had put Blackstone in a position of weakness  
 17 in the first place, including by conspiring to unfairly compete with Blackstone and facilitating the  
 18 factories to breach their contracts with Blackstone. Costco had also prevented all opportunities  
 19 for Blackstone by secretly dealing with Technomate/E2/Carpenter and also engaging directly with  
 20 DCI/Home Star.

21       266. As a direct, proximate, and foreseeable result of Costco's interference, Blackstone  
 22 has suffered substantial damages in an amount to be proven.

23 **F. Sixth Claim: Violation of Lanham Act**

24       267. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 25 above paragraphs.

26       268. By Costco's unauthorized use of Blackstone's intellectual property, Costco violated

the Lanham Act in at least three different ways: (i) Costco falsely designated the origin of its products; (ii) Costco infringed Blackstone's trade dress; and (iii) Costco competed unfairly with Blackstone.

269. Costco's actions described herein constitute an unlawful use of a word, term, name, symbol, or device and/or combination thereof; a false designation of origin, a false or misleading description of fact, and/or false or misleading representation of fact; and unfair competition, which has caused and is likely to continue to cause confusion, mistake, and/or deception as to the affiliation, connection, or association of Blackstone with Costco's infringing products, or as to the origin, sponsorship, endorsement, or approval of Costco's goods, services, or commercial activities, and/or dilution of the distinctive quality of Blackstone's intellectual property, all in violation of the Lanham Act, 15 U.S.C. § 1125.

## **Costco Falsely Designated the Origin of Its Products**

270. Among other violations of the Lanham Act, for the 2019 season, Costco made false designations of origin, and/or false or misleading descriptions of fact, and/or false or misleading representations of fact.

271. For example, Costco wrongfully, improperly, and without authorization designated fans that Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar as distributed by Blackstone. For example, Blackstone Tower Fans and Blackstone Personal Fans that have been sold at Costco outlets, which were not sold to Costco by Blackstone, contained the following false statement on the packaging, manuals, and/or molding:

Distributed By:  
Blackstone International Ltd.  
2018 Lord Baltimore Drive  
Baltimore, MD 21244  
USA  
Made in China

272. Contrary to Costco's designation, these products are not "distributed by" Blackstone. Costco is falsely designating the origin of these products, misrepresenting who is responsible for the products, and misleading the consumers. This misconduct is designed to

1      improperly impose on Blackstone responsibility for a product that it has had no role in  
 2 manufacturing, producing, distributing, or selling.

3            273. Blackstone Tower Fans and Blackstone Personal Fans manufactured by  
 4 Technomate/E2/Carpenter and/or DCI/Home Star directly for Costco also used Blackstone's UPC  
 5 number, leading to confusion about the origin of the goods. Costco has no right to use Blackstone's  
 6 UPC number.

7            274. Additionally, Costco has imported, distributed, and/or sold Blackstone Tower Fans  
 8 and Blackstone Personal Fans that falsely, wrongfully, improperly, and without authorization  
 9 printed Blackstone's customer service phone number and email address on the packaging, in the  
 10 user manual, and embedded on the bottom of the product itself.

11            275. For example, Blackstone Tower Fans and Blackstone Personal Fans being sold at  
 12 Costco warehouse outlets that were manufactured by DCI/Home Star also had printed  
 13 Blackstone's Customer Service phone number (1-888-525-7969) and email address  
 14 ([customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)) on the packaging, in the user manual, and embedded on the  
 15 bottom of the product itself. Costco has no right to use Blackstone customer service information  
 16 on any of the products manufactured by DCI/Home Star (or any other manufacturer) and sold to  
 17 Costco for resale.

18            276. As a further example, the Blackstone Tower Fan manufactured by DCI/Home Star  
 19 and shipped under Purchase Order No. 1710131867 on March 11, 2019, is one of the Blackstone  
 20 Tower Fans on which Costco improperly, inaccurately, and without authorization falsely  
 21 designated Blackstone as the distributor and used Blackstone's customer service (hereinafter,  
 22 "Blackstone Tower Fan, P.O. No. 1710131867").

23            277. The following is a photo of the packaging of Blackstone Tower Fan, P.O. No.  
 24 1710131867 that shows Costco improperly designated the distributor of Blackstone Tower Fan,  
 25 P.O. No. 1710131867 as the distributor and used Blackstone's UPC, number 846270000216  
 26 (located below the bar code), without authorization. The relevant portions of the photograph are

1 highlighted using a red circle:



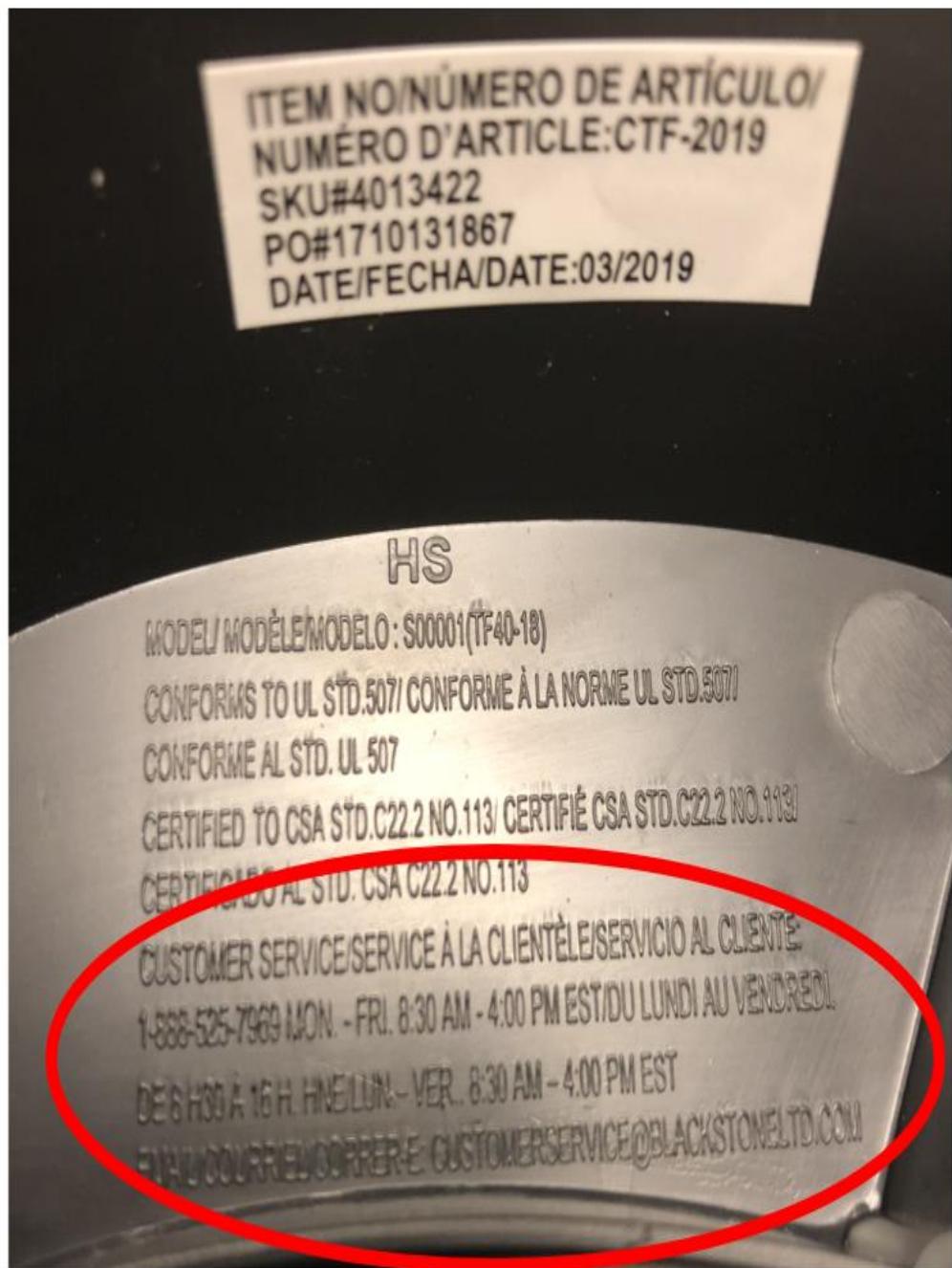
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SECOND AMENDED COMPLAINT - 62  
CASE NO. 2:20-CV-00964-TSZ

GOLDFARB & HUCK  
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1       278. The following image is another picture of the packaging of Blackstone Tower Fan,  
2 P.O. No. 1710131867 that shows that Costco improperly and without authorization used  
3 Blackstone's customer service phone number and email address. Again, the relevant portions of  
4 the photograph are highlighted using a red circle:



1       279. The following image is a picture of the bottom of the base of Blackstone Tower  
 2 Fan, P.O. No. 1710131867 that shows that Costco improperly and without authorization used  
 3 Blackstone's customer service phone number and email address. Again, the relevant portions of  
 4 the photograph are highlighted using a red circle:



1       280. As another example, the Blackstone Personal Fan manufactured directly for Costco  
2 by DCI/Home Star and bearing a label that identifies it as Purchase Order No. 1791217878 is an  
3 example of Costco's further false designation and fraud in the manufacture and shipment of goods  
4 for sale to consumers in the United States. Purchase Order No. 1791217878 was the number of a  
5 purchase order originally issued by Costco to Blackstone, and in turn issued by Blackstone to  
6 DCI/Home Star. But when Costco breached the 2019 Fan Program Agreement, Costco cancelled  
7 Purchase Order No. 1791217878 along with thousands of other purchase orders to Blackstone  
8 under the 2019 Fan Program Agreement. DCI/Home Star never sold a fan with that purchase order  
9 number to Blackstone. Despite the fact that Purchase Order No. 1791217878 was cancelled,  
10 Costco had that purchase order number affixed to the fan to falsely designate the origin of the  
11 product and to avoid any responsibility for the product. Thus, the fan bearing Purchase Order No.  
12 1791217878 is actually Costco's fan and not a fan that was manufactured for Blackstone or sold  
13 by Blackstone to Costco. It is one of the hundreds of thousands of the Blackstone Personal Fans  
14 on which Costco improperly, inaccurately, and without authorization falsely designated  
15 Blackstone as the distributor and used Blackstone's Customer Service (hereinafter, "Blackstone  
16 Personal Fan, P.O. No. 1791217878").

17       281. The following is a photo of the packaging of Blackstone Personal Fan, P.O. No.  
18 1791217878 that shows Costco improperly designated Blackstone as the distributor of Blackstone  
19 Personal Fan, P.O. No. 1791217878. The relevant portions of the photograph are highlighted using  
20 a red circle:



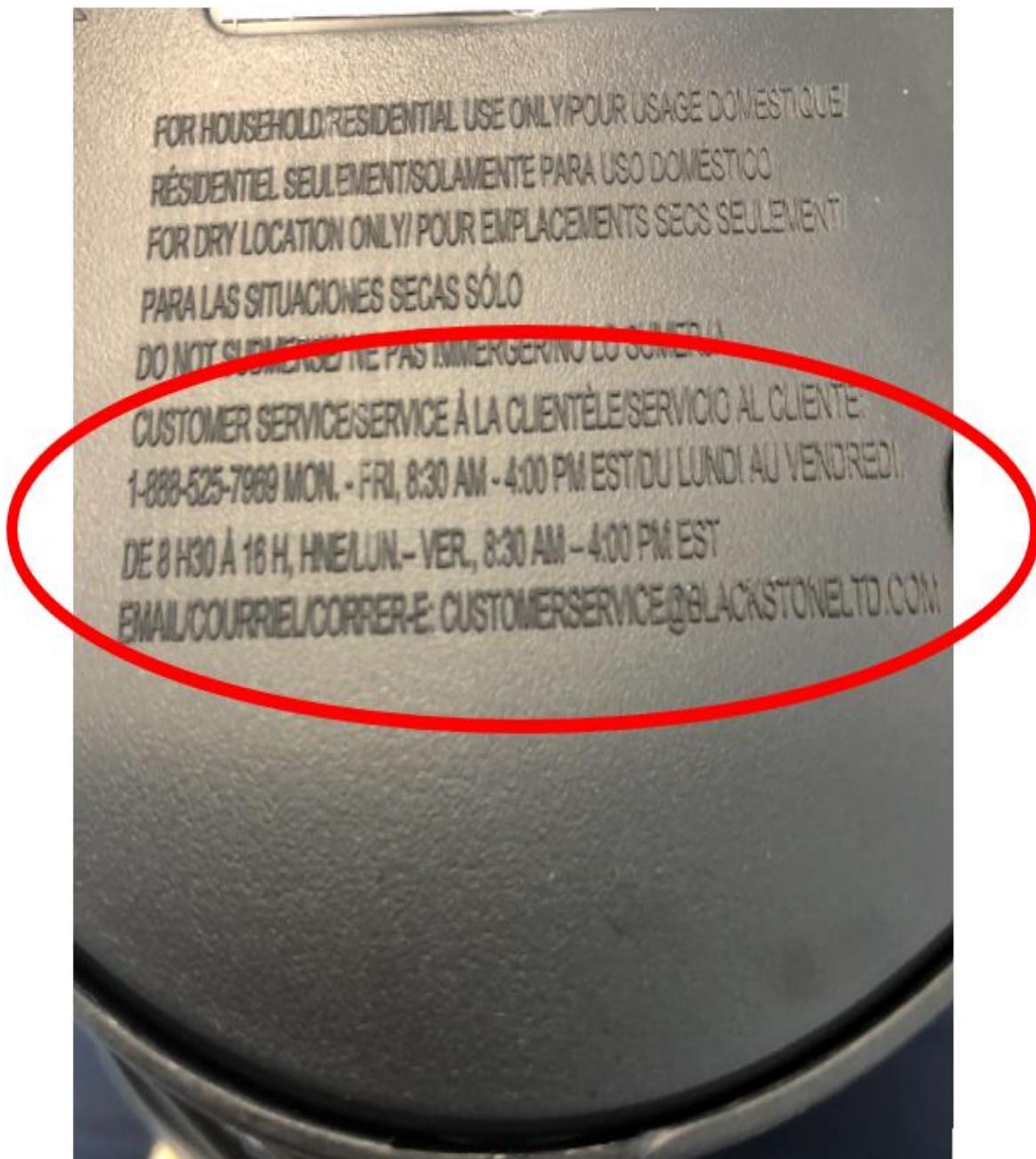
**SECOND AMENDED COMPLAINT - 66  
CASE NO. 2:20-CV-00964-TSZ**

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1       282. The following image is another picture of the packaging of Blackstone Personal  
 2 Fan, P.O. No. 1791217878 that shows that Costco improperly and without authorization used  
 3 Blackstone's customer service phone number and email address. Again, the relevant portions of  
 4 the photograph are highlighted using a red circle:



1       283. The following image is picture of the bottom of the base of a Blackstone Personal  
2 Fan manufactured directly for Costco by DCI/Home Star that shows that Costco improperly and  
3 without authorization used Blackstone's customer service phone number and email address.  
4 Again, the relevant portions of the photograph are highlighted using a red circle:



1       284. As depicted, the fans that Costco purchased directly from  
 2 Technomate/E2/Carpenter and/or DCI/Home Star also utilized the stylized “B” trademarked by  
 3 Blackstone, as well as the Cascade brand name, logo, and proprietary alphabet, and Blackstone’s  
 4 name and logo.

5       285. Additionally, Blackstone has also received and continues to receive customer  
 6 complaints and product warranty cards for Blackstone Tower Fans and Blackstone Personal Fans  
 7 manufactured directly for Costco by Technomate/E2/Carpenter and/or DCI/Home Star, indicating  
 8 that Costco has included product warranty cards in Costco products and packaging that falsely  
 9 represent that Blackstone is providing a warranty for such products. Those warranty cards also  
 10 include Blackstone’s name. Blackstone has no warranty responsibility for such products and has  
 11 never authorized Costco to sell such products under the Expired License with Blackstone warranty  
 12 cards or any other information indicating that Blackstone warrants such products.

13       286. Although later in production Costco made minor changes by printing a Homestar  
 14 customer service email and phone number on some packaging and some user manuals, those  
 15 efforts did not correct the false designation of origin of the product and the misleading listing of  
 16 Blackstone’s customer service information because the product still identifies Blackstone’s  
 17 customer service phone number and email embedded on the product itself.

18       287. By representing to the public that its products are distributed by Blackstone and  
 19 directing the public to contact Blackstone at Blackstone’s customer service email and phone  
 20 number, Costco intentionally, falsely, improperly, and maliciously mislead the public with the  
 21 intent to harm Blackstone and avoid Costco’s own responsibility for the products. Such actions  
 22 are improper and falsely designate the origin of Costco’s goods as being from Blackstone, mislead  
 23 the public as to the origin of the infringing goods, and dilute Blackstone’s brand and/or marks in  
 24 violation of Section 1125 of the Lanham Act (15 U.S.C. § 1125).

25       288. At no point did Costco have the right to use Blackstone customer service  
 26 information on any of the products that were not sold by Blackstone to Costco.

1       289. Blackstone repeatedly notified Costco of the false origin and customer service  
2 issues related to the products that are being sold directly to Costco by Technomate/E2/Carpenter  
3 and/or the other factories.

4       290. For example, counsel for Blackstone contacted Costco by telephone and email,  
5 including an email from Blackstone's counsel to Costco's corporate counsel dated May 2, 2019.  
6 Among other things, the May 2, 2019 email notified Costco has follows:

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Thank you for your time on the phone today. This email will provide you with additional detail regarding the problems I mentioned that Blackstone has recently learned of relating to the sales and service of products Costco is selling that are subject to the Intellectual Property License Agreement between Costco and Blackstone. I am bringing these problems to your attention so Costco can address them promptly. Blackstone has recently experienced a spike in reports to its Customer Service phone number and its Customer Service email address, as well as returns posted to its Costco vendor account. This is quite surprising since the fans being sold by Costco currently are supplied by other Vendors. In the process of investigating these issues, Blackstone has discovered the following:

1. The Tower Fans and Personal Fans currently being sold at Costco Warehouse outlets that were manufactured by Home Star International, Ltd. and Design Center International Ltd. ("DCI/Home Star") contain the following statement on the side of the packaging:

Distributed By:  
Blackstone International Ltd.  
2018 Lord Baltimore Drive  
Baltimore, MD 21244  
USA  
Made in China

These products are not distributed by Blackstone. The statement is not an accurate statement of the origin of these products or who is responsible for the products. The item numbers of the products at issue are 2187363 (2019 Mini 2 Pack), 3013422 (2019 Tower Fan), and 4013422 (2019 Tower fan).

2. The Tower Fans and Personal Fans currently being sold at Costco Warehouse outlets that were manufactured by DCI/Home Star contain the following false designations relating to Customer Service printed on the packaging, engraved on the product itself, and printed on the Instruction Manual (with minor variations):

Customer Service  
Service a la Clientele  
Servicio al Cliente:  
English/Espanol: 1-888-525-7969  
Francais: 410-277-9370  
customer [service@blackstoneltd.com](mailto:service@blackstoneltd.com)

The Customer Service phone numbers listed on these Costco/Home Star products are Blackstone's Customer Service phone numbers and Blackstone's Customer Service email address. Neither Costco nor DCI/Home Star has ever been authorized to use the Blackstone Customer Service information on any of the

1 products Costco has purchased from DCI/Home Star and is now selling in its  
 2 stores. The License Agreement provides that Blackstone is not responsible for  
 3 customer service, product liability or defects. Again, these statements on these  
 4 products are not an accurate statement of the origin of these products or who is  
 5 responsible for the products. The same item numbers are at issue. I should point  
 6 out that the products supplied by E2 Limited/Mikia do not include references to  
 7 distribution by Blackstone or the Blackstone Customer Service number and use a  
 8 UPC different from Blackstone's UPC. While there are separate problems with E2  
 9 Limited/Mikia, as noted below, their products demonstrate that it was easy to delete  
 10 the reference to "Distributed by: Blackstone International Ltd." and provide separate  
 11 customer service information. DCI/Home Star should have been able to do the  
 12 same.

13       3.       Blackstone is currently receiving Product Warranty cards from Costco  
 14 members for Tower Fans and Personal Fans manufactured by either Home Star  
 15 and/or E2 Limited/Mikia. Blackstone has no warranty responsibility for such  
 16 products and has never authorized Costco to sell such products under the License  
 17 Agreement with Blackstone Warranty Cards.

18       4.       Blackstone has been receiving complaints, through its Customer Service  
 19 phone numbers and its Customer Service email, from consumers who have recently  
 20 purchased from Costco Tower Fans and Personal Fans manufactured by either  
 21 DCI/Home Star and/or E2 Limited/Mikia. Blackstone has no responsibility for such  
 22 products.

23       5.       Blackstone is improperly being charged by Costco through its vendor  
 24 account for returns of Tower Fans and Personal Fans manufactured by either  
 25 DCI/Home Star or E2 Limited/Mikia that are covered by the License Agreements,  
 26 not Blackstone's Vendor Agreement.

27       6.       The Tower Fans and Personal Fans manufactured by Home Star are using  
 28 Blackstone's UPC and item numbers, leading to confusion about the origin of the  
 29 goods. The products under the License Agreement were supposed to have different  
 30 UPC and item numbers to prevent problems such as this.

31       7.       Blackstone has been receiving reports that the Customer Service phone  
 32 number printed on the Tower Fans manufactured by E2 Limited/Mikia is not being  
 33 answered. We have received inquiries from Costco members who have not been  
 34 able to reach the E2 Limited/Mikia customer service personnel. Blackstone has  
 35 tried to reach the E2 Limited/Mikia Customer Service phone number to address  
 36 these issues but no one is answering calls to that number.

37       8.       Costco club personnel have been advising Costco members who cannot  
 38 reach anyone at the E2/Mikia Customer Service number to call Blackstone's  
 39 Customer Service number.

40       9.       Costco members, frustrated by the inability to reach anyone at the E2  
 41 Limited/Mikia Customer Service number, have been searching online for  
 42 Blackstone's Customer Service number and seeking service from Blackstone for  
 43 products that Blackstone does not sell to Costco.

1           10. Blackstone has received reports of malfunctioning fans manufactured by  
 2 either DCI/Home Star or E2 Limited/Mikia that raise questions about the quality of  
 3 these products. Blackstone is limited in its ability to investigate these reports  
 without additional information from Costco.

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5       291. On May 3, 2019, Blackstone provided additional notice to Costco by email to  
 6 Costco's corporate counsel attaching a copy of a cease and desist letter from Blackstone to  
 7 DCI/Home Star. As described in the May 3, 2019 letter, Blackstone notified Costco (and  
 8 DCI/Home Star) that they had no right to use designations attributing the distribution of products  
 9 manufactured by DCI/Home Star to Blackstone or to use Blackstone's customer service phone  
 10 number and email address.

11       292. The May 3, 2019 letter further directed DCI/Home Star to cease and desist (and  
 12 provided further notice to Costco) from attempting to manufacture, ship, sell, offer for sale,  
 13 distribute, or import any product representing that it was "Distributed by: Blackstone" or to use  
 14 Blackstone's customer service information in any way.

15       293. In response to the repeated notice provided by Blackstone, Costco nonetheless  
 16 continued to import, distribute, and/or sell fans that falsely, wrongfully, improperly, and without  
 17 authorization include "Distributed by: Blackstone" on the packaging and have Blackstone's  
 18 customer service email and phone number embedded on the product itself.

19       294. Although Costco represented that purportedly "changes have been implemented,"  
 20 Costco failed to make "changes" and failed to honor its obligations and commitments. Indeed, the  
 21 consequences of Costco's misconduct still exists in the marketplace today and has caused, and  
 22 continues cause, damage to Blackstone.

23       295. The embedding of Blackstone's customer service Information on the product itself  
 24 is particularly harmful to Blackstone because it will remain even after the consumer disposes of or  
 25 loses the packaging and/or the instruction manual.

26       296. As described above, and evidenced by the substantial number of customer  
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1 complaints regarding fans that were sold directly to Costco by Technomate/E2/Carpenter and/or  
 2 DCI/Homestar, consumers are confused about the origin of the fans.

3 297. Costco's intentional decision to continue to falsely designate the origin of the  
 4 products it purchased directly from the manufacturers, in direct defiance of Blackstone's repeated  
 5 notice, is part of a wrongful and malicious plan to damage Blackstone, mislead the public, and  
 6 avoid responsibility for product returns, product defects, and any potential product liability from  
 7 the consumer's use of the products.

8 298. Costco's misconduct is injurious to Blackstone, including causing confusion as to  
 9 the source of the infringing products, and an improper association with Blackstone that serves to  
 10 dilute the goodwill that Blackstone has developed in the market.

11 299. Accordingly, Costco's false designations of origin, and/or false or misleading  
 12 descriptions of fact, and/or false or misleading representations of fact, has caused and is likely to  
 13 continue to cause confusion, mistake, and/or deception as to the affiliation, connection, or  
 14 association of Blackstone with Costco's infringing products, or as to the origin, sponsorship,  
 15 endorsement, or approval of Costco's goods, services, or commercial activities, and/or dilution of  
 16 the distinctive quality of Blackstone's intellectual property.

17 **Costco Infringed Blackstone's Trade Dress**

18 300. In addition to falsely designated the origin, Costco also infringed Blackstone's trade  
 19 dress.

20 301. Among other intellectual property, Blackstone owns and has developed trade dress  
 21 rights, in connection with the design elements, packaging, and package inserts related to  
 22 Blackstone's products.

23 302. More specifically, Blackstone owns trade dress protection for the packaging, as  
 24 well as trade dress for the overall design, the louver system, grill, arched top form, control panel  
 25 layout, control panel and icons, logo application, cylindrical stock, base, fit, and finish of the  
 26 Blackstone Tower Fan. Blackstone also owns trade dress protection for the remote-control design

1 including the “circle and cross” layout, control icons, and logo application.

2       303. Blackstone’s trade dress in the Blackstone Tower Fan is non-functional within the  
 3 meaning of the Lanham Act. The packaging, overall design, louver system, grill, arched top form,  
 4 control panel layout, control panel and icons, logo application, cylindrical stock, base, fit, and  
 5 finish of the Blackstone Tower Fan, and remote-control design, does not yield a utilitarian  
 6 advantage over other designs. Alternative packaging, designs, design features and/or elements,  
 7 fit, and finish are available. There is no advertising touting the utilitarian advantages of the  
 8 packaging, design, design features and/or elements, fit, and finish. The packaging, design, design  
 9 features and/or elements, fit, and finish are not especially simple or inexpensive to manufacture.  
 10 For example, the sizing and shape of top, stock, and base is not functional. However, those design  
 11 features and/or elements, as well as the overall design, provide a very sleek, distinctive, and  
 12 particular look and feel for the product.

13       304. The louver system, grill arched top form, cylindrical stock, and base, for example,  
 14 yield no utilitarian advantage over alternative shapes, no advertising touts the shape as utilitarian,  
 15 the design is not especially simple or inexpensive to manufacture, and alternative designs are  
 16 available. The control panel layout, control panel and icons, and logo application has no utilitarian  
 17 advantage over different locations or shapes (which alternative designs are available), no  
 18 advertising touts the particular design as utilitarian, and it is not especially simple or inexpensive  
 19 to manufacture. The packaging provides no utilitarian advantage over different packaging which  
 20 could be used, no advertising touts the packaging as utilitarian, and it is not especially simple or  
 21 inexpensive to manufacture.

22       305. Blackstone’s trade dress is nonfunctional and is widely recognized by the consumer  
 23 products industry and has built up extensive goodwill and acquired secondary meaning among the  
 24 relevant trade as a symbol identifying Blackstone as the creator of the trade dress.

25       306. The consuming public has come to recognize Blackstone’s trade dress as signifying  
 26 Blackstone as the particular source of the fans.

1       307. Indeed, Blackstone's trade dress is well-known among consumers and is  
 2 distinctive, as over 2 million units of the Blackstone Tower Fan have been sold throughout the  
 3 United States since 2016.

4       308. The trade dress of the Blackstone Tower Fan has developed and acquired secondary  
 5 meaning to potential consumers as a result of the sales, promotion, and marketing by Blackstone,  
 6 in that the consuming public has come to associate tower fans bearing such dress with Blackstone.

7       309. Further, the non-functional design aspects of the Blackstone's intellectual property  
 8 create products whose trade dress as a whole is inherently distinctive and/or has secondary  
 9 meaning or acquired distinctiveness, including the placement of the grills and controls, sizing and  
 10 shape of the top, stock, and base, as well as the overall branding, color, and labeling. In fact, the  
 11 non-functional design and look of the Blackstone Tower Fan as a whole is capable of identifying  
 12 the product as coming from Blackstone.

13       310. Blackstone's trade dress has secondary meaning and/or acquired distinctiveness, as  
 14 evidenced by the fact that consumers associate Blackstone' trade dress with Blackstone and are  
 15 confused by the source of knock-off products sold by Costco. For example, Costco has captured  
 16 the distinctive, non-functional features of the Blackstone Tower Fan, which creates (and has, in  
 17 fact, already created) a likelihood of confusion between the Blackstone Tower Fan and Sierra  
 18 Tower Fan and OmniBreeze Tower Fan.

19       311. Costco's copying of the Blackstone Tower Fan and their distinctive design  
 20 elements, which have secondary meaning and/or acquired distinctiveness, is creating both the  
 21 likelihood of confusion and actual confusion in the marketplace. In fact, Blackstone has received  
 22 numerous consumer complaints and requests for product replacement from consumers who  
 23 contacted Blackstone's customer service email and/or phone number believing that the Sierra  
 24 Tower Fan and OmniBreeze Tower Fan sold by Costco are actually the Blackstone Tower Fan.

25       312. Blackstone's products have their own particular look and Blackstone's trade dress  
 26 is protectable under the Lanham Act because it is inherently distinctive and/or has achieved  
 27

1 secondary meaning in the market. Costco's has used false designations of origin, false or  
 2 misleading descriptions of fact, and false or misleading misrepresentations of fact that are likely  
 3 to lead consumers to believe its knock-off fans are Blackstone's products.

4       313. In fact, Blackstone's trade dress is inherently distinctive and/or has secondary  
 5 meaning or acquired distinctiveness, such that when prospective consumers see the Sierra Tower  
 6 Fan and OmniBreeze Tower Fan their minds jump to Blackstone as the producer of the product.  
 7 For example, as described above, and evidenced by the substantial number of customer complaints  
 8 regarding Sierra Tower Fan and other misidentification of the OmniBreeze Tower Fan, consumers  
 9 are confused about the origin of the fans.

10      314. Costco even used a mountain range in the name of their knock-off Sierra Tower  
 11 Fan, which is a confusingly similar copy of Blackstone's "Cascade" brand.

12      315. Blackstone's trade dress has acquired distinctiveness and enjoys secondary  
 13 meaning among consumers, identifying Blackstone as the source of the fans, based on extensive  
 14 marketing, promotion, and sales throughout the United States. Indeed, Blackstone's marketing,  
 15 promotion, and sales of its distinctive trade dress has resulted in considerable customer goodwill.

16      316. By mimicking a combination of several elements of Blackstone's trade dress,  
 17 Costco has misappropriated Blackstone's trade dress. And the mimicking of Blackstone's trade  
 18 dress in the infringing knock-offs is likely to cause confusion, mistake, or to deceive (and has, in  
 19 fact, caused confusion, mistake, and deceived) consumers as to the affiliation, connection, or  
 20 association of Costco's knock-off fans with Blackstone, and/or as to the origin, sponsorship, or  
 21 approval by Blackstone of Costco's knock-off fans.

22      317. In addition, based on extensive and consistent advertising, promotion and sales  
 23 throughout the United States, Blackstone's trade dress has acquired distinctiveness and enjoys  
 24 secondary meaning among consumers, identifying Blackstone as the source of the fans.

25      318. Moreover, Costco's infringement of Blackstone's trade dress is easily apparent  
 26 from a simple comparison of the Blackstone's Cascade-branded fan with the Sierra Tower Fan:  
 27



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SECOND AMENDED COMPLAINT - 79  
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SECOND AMENDED COMPLAINT - 80  
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SECOND AMENDED COMPLAINT - 81  
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SECOND AMENDED COMPLAINT - 82  
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SECOND AMENDED COMPLAINT - 83  
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1       319. Blackstone has worked to develop its trade dress and reputation within the  
 2 consumer products industry through extensive industry-focused promotion and marketing,  
 3 including attending many retailer meetings and trade shows, and has built a valuable business  
 4 based on demand for its distinctively-styled Blackstone Tower Fan.

5       320. Blackstone's products are marketed throughout the United States.

6       321. As a result of Blackstone's promotional and marketing efforts, consumers and  
 7 others in the industry recognize the uniqueness of Blackstone's trade dress, and as a result,  
 8 Blackstone's trade dress has attained commercial success.

9       322. Blackstone's trade dress is a critical component of Blackstone's business and  
 10 represents enormous commercial value to Blackstone. Blackstone has invested substantial time  
 11 and expense in the development and promotion of the Blackstone Tower Fan, efforts that have  
 12 entailed countless hours of work and resources spread over several years to build the reputation of  
 13 Blackstone and its trade dress in the consumer products industry.

14       323. Blackstone's trade dress is nonfunctional and is widely recognized by the industry  
 15 and has built up extensive goodwill and acquired secondary meaning among the relevant trade as  
 16 a symbol identifying Blackstone as the creator of the Blackstone Tower Fan."

17       324. Blackstone's trade dress has acquired distinctiveness and secondary meaning  
 18 among consumers due to Blackstone's promotion and sales of products utilizing Blackstone's trade  
 19 dress.

20       325. As described above, Costco's copying of the Blackstone Tower Fans and their  
 21 distinctive design elements, has already caused consumers to confused about the origin of the fans,  
 22 as evidenced by the substantial number of customer comments regarding Costco's knock-off fans.

23       326. Costco's unauthorized use of Blackstone's intellectual property is injurious to  
 24 Blackstone, including lost sales, confusion as to the source of the infringing products, and an  
 25 improper association with Blackstone that serves to dilute the goodwill that Blackstone has  
 26 developed in the market.

1       327. Accordingly, Costco's infringement of Blackstone's trade dress has caused and is  
 2 likely to continue to cause confusion, mistake, and/or deception as to the affiliation, connection,  
 3 or association of Blackstone with Costco's infringing products, or as to the origin, sponsorship,  
 4 endorsement, or approval of Costco's goods, services, or commercial activities, and/or dilution of  
 5 the distinctive quality of Blackstone's intellectual property.

6       **Costco Competed Unfairly With Blackstone**

7       328. In addition to false designation of origin and infringement of Blackstone's trade  
 8 dress, Costco also competed unfairly with Blackstone.

9       329. As described above, Costco covertly communicated with  
 10 Technomate/E2/Carpenter and made misrepresentations and omissions regarding the supply of  
 11 Blackstone Tower Fans for 2019 season.

12       330. Costco also conspired with Technomate/E2/Carpenter to misappropriate  
 13 Blackstone's unique methods and processes, proprietary modeling and formulas, and valuable and  
 14 exclusive know-how.

15       331. For example, among other of Blackstone's proprietary information, Costco  
 16 knowingly conspired to use the Cascade-brand, packaging, product design, pallet optimization,  
 17 pricing, tooling, and manufacturing logistics.

18       332. Costco also improperly utilized confidential information regarding Blackstone's  
 19 business relationship with DCI/Home Star and Mikia, including Blackstone's proprietary pricing  
 20 information.

21       333. Costco also wrongfully utilized Blackstone's purchase orders and invoicing  
 22 information with DCI/Home Star and Mikia.

23       334. The fans Costco purchased directly from Technomate/E2/Carpenter and/or  
 24 DCI/Homestar also utilized Blackstone's tooling and molds.

25       335. In addition to destroying Blackstone's business for the 2019 season, Costco also  
 26 falsely, wrongfully, improperly, and without authorization designated the fans purchased directly  
 27

1      Technomate/E2/Carpenter and/or DCI/Homestar as “Distributed By” Blackstone.

2            336. Costco also falsely, wrongfully, improperly, and without authorization listed  
3 Blackstone’s customer service information on the fans.

4            337. Costco also falsely, wrongfully, improperly, and without authorization utilized  
5 Blackstone’s warranty cards.

6            338. Costco also falsely, wrongfully, improperly, and without authorization utilized  
7 Blackstone’s UPC number.

8            339. Costco’s false labeling as “Distributed By,” and unauthorized use of Blackstone’s  
9 customer service information, warranty cards, and UPC number has damaged Blackstone’s  
10 reputation, misled consumers, and is part of Costco’s improper attempt to avoid responsibility for  
11 product returns, product defects, and potential product liability from the use of their products.

12          340. After destroying Blackstone’s business for the 2019 season, Costco continued to  
13 unfairly compete with Blackstone in the subsequent season.

14          341. As described above, after the Expired License expired, Costco misappropriated  
15 Blackstone’s unique methods and processes, proprietary modeling and formulas, and valuable and  
16 exclusive know-how for its knock-off fans.

17          342. For example, Costco unlawfully utilized Blackstone’s pallet optimization,  
18 packaging design requirements, and shipping container logistics.

19          343. Costco also knowingly conspired to utilize Blackstone’s Cascade-branded fan as  
20 the design base of the knock-off fans.

21          344. On information and belief, Costco also utilized Blackstone’s tooling and molds for  
22 Costco’s knock-off fans.

23          345. Costco also continued to improperly utilize Blackstone’s proprietary and/or  
24 confidential information regarding Blackstone’s business relationship with the factories.

25          346. Costco also continued to wrongfully utilize Blackstone’s invoicing and pricing  
26 information.

1       347. Costco also unlawfully utilized Blackstone's designs, packaging, tooling, pricing,  
 2 logistics, and other proprietary information for the 2020 season.

3       348. As described above, and evidenced by the substantial number of customer  
 4 complaints regarding fans that were sold directly to Costco by Technomate/E2/Carpenter and/or  
 5 DCI/Homestar for the 2019 season, as well as Costco's knock-off fans for the 2020 (*i.e.*, the Sierra  
 6 Tower Fan) and Costco's knock-off fans for the 2021 season (*i.e.*, OmniBreeze Tower Fan),  
 7 consumers are confused about the origin of the fans.

8       349. Costco's unfair competition is injurious to Blackstone, including lost sales,  
 9 confusion as to the source of the infringing products, and an improper association with Blackstone  
 10 that serves to dilute the goodwill that Blackstone has developed in the market.

11       350. Accordingly, Costco's unfair competition has caused and is likely to continue to  
 12 cause confusion, mistake, and/or deception as to the affiliation, connection, or association of  
 13 Blackstone with Costco's infringing products, or as to the origin, sponsorship, endorsement, or  
 14 approval of Costco's goods, services, or commercial activities, and/or dilution of the distinctive  
 15 quality of Blackstone's intellectual property.

16       351. The unauthorized use of Blackstone's intellectual property or confusingly similar  
 17 variations of Blackstone's products constitutes false designation of origin, trade dress  
 18 infringement, and unfair competition. And the unauthorized use of Blackstone's intellectual  
 19 property has caused injury to Blackstone, including lost sales, confusion as to the source of the  
 20 infringing products, and an improper association between Costco's fans and Blackstone, which  
 21 dilutes the goodwill that Blackstone has developed in the market.

22       352. Costco's acts of false designation of origin, trade dress infringement, and unfair  
 23 competition have been done intentionally, willfully, and deliberately, and Costco has profited and  
 24 been unjustly enriched by sales that Costco would not otherwise have made but for Costco's  
 25 unlawful conduct.

26       353. Costco's activities have caused and, unless enjoined, will continue to cause  
 27

1 confusion and deception to the public as to the source and origin of the infringing products.  
 2 Costco's conduct injures and will continue to injure and dilute Blackstone's goodwill and  
 3 reputation, for which Blackstone has no adequate remedy at law.

4       354. Blackstone is entitled to damages, extraordinary damages, Costco's profits, and  
 5 attorneys' fees and costs pursuant to 15 U.S.C. § 1117, in an amount to be determined at trial.

6       355. Costco's actions with respect to Blackstone's intellectual property have caused,  
 7 and, unless restrained by this Court, will continue to cause, serious and irreparable harm, for which  
 8 there is no adequate remedy at law, entitling Blackstone to injunctive relief.

9       356. In addition, and in the alternative, in the absence of the Expired License Costco  
 10 also violated the Lanham Act, 15 U.S.C. § 1125 *et seq.* by utilizing and infringing all of  
 11 Blackstone's intellectual property listed in Exhibit A, Addendum Exhibit A-1, and Second  
 12 Addendum Exhibit A-2 of the Expired License. In the absence of the Expired License, Costco  
 13 also violated the Lanham Act, 15 U.S.C. § 114 and 15 U.S.C. § 1125 *et seq.*, by utilizing and  
 14 infringing Blackstone's federally-registered and common law trademarks in connection with the  
 15 fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar for the 2019  
 16 season.

17 **G. Seventh Claim: Common Law Unfair Competition**

18       357. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 19 above paragraphs.

20       358. The actions of Costco described herein constitute common law unfair competition,  
 21 including unfair business practices, misrepresentations relating to source, passing off, and  
 22 misappropriation of trade values.

23       359. For example, Costco covertly communicated with Technomate/E2/Carpenter and  
 24 made misrepresentations and omissions regarding the supply of Blackstone Tower Fans for 2019  
 25 season.

26       360. Costco also conspired with Technomate/E2/Carpenter to misappropriate

Blackstone's unique methods and processes, proprietary modeling and formulas, and valuable and exclusive know-how.

361. Among other of Blackstone's proprietary information, Costco knowingly conspired to use the Cascade-brand, packaging, product design, pallet optimization, pricing, tooling, and manufacturing logistics.

362. Coscto also improperly utilized confidential information regarding Blackstone's business relationship with DCI/Home Star and Mikia, including Blackstone's proprietary pricing information.

363. Costco also wrongfully utilized Blackstone's purchase orders and invoicing information with DCI/Home Star and Mikia.

364. The fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar also utilized Blackstone's tooling and molds.

365. In short, Costco conspired with Technomate/E2/Carpenter to usurp Blackstone's turn-key operation, convert Blackstone's manufacturing processes, and steal Blackstone's profits for the 2019 season.

366. In addition to destroying Blackstone's business for the 2019 season, Costco also falsely, wrongfully, improperly, and without authorization designated certain fans as distributed by Blackstone.

367. For example, the following false statement was embedded in the molding, stamped on the packaging, and printed in the manuals of certain fans that Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar:

Distributed By:  
Blackstone International Ltd.  
2018 Lord Baltimore Drive  
Baltimore, MD 21244  
USA  
Made in China

368. However, the fans that Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar were not “distributed by” Blackstone. Costco’s false designation

1 misrepresented responsibility for the products and misled consumers. And Costco's misconduct  
 2 unfairly attempts to impose on Blackstone responsibility for products that it has had no role in  
 3 manufacturing, producing, distributing, or selling.

4       369. Costco also sold fans to consumers that falsely, wrongfully, improperly, and  
 5 without authorization printed Blackstone's customer service phone number and email address in  
 6 the user manual, as well as on the packaging and embedded on the bottom of the product itself.

7       370. For example, fans sold at Costco warehouse outlets that Costco purchased directly  
 8 from Technomate/E2/Carpenter and/or DCI/Homestar had Blackstone's customer service phone  
 9 number (1-888-525-7969) and email address ([customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)) embedded in  
 10 the molding, stamped on the packaging, and printed in the manuals.

11       371. However, Costco had no right to use Blackstone customer service information on  
 12 any of the fans that Costco purchased directly from Technomate/E2/Carpenter and/or  
 13 DCI/Homestar.

14       372. Costco also improperly utilized Blackstone's product warranty cards with fans that  
 15 Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar.

16       373. However, Blackstone has no warranty responsibility for such products and never  
 17 authorized Costco to sell such products with Blackstone warranty cards or any other information  
 18 indicating that Blackstone warrants such products. Thus, Costco have falsely represented that  
 19 Blackstone is providing a warranty for such products.

20       374. Costco also used Blackstone's UPC number, leading to confusion about the origin  
 21 of the goods.

22       375. Costco's false labeling as "Distributed By," and unauthorized use of Blackstone's  
 23 customer service information, warranty cards, and UPC number, has damaged Blackstone's  
 24 reputation, misled consumers, and is part of Costco's improper attempt to avoid responsibility for  
 25 product returns, product defects, and potential product liability from the use of its products.

26       376. Costco has wrongfully, improperly, and without authorization designated  
 27

1 Blackstone Tower Fans and Blackstone Personal Fans imported, distributed, and/or sold by Costco  
 2 as distributed by Blackstone, printed Blackstone's customer service information on the package or  
 3 product itself, and unlawfully utilized Blackstone's UPC number. Costco took these actions  
 4 deceptively and without authorization. Contrary to Costco's designation, these products are not  
 5 distributed by Blackstone, and Costco has no right to use Blackstone's customer service  
 6 information on any of the products Costco purchased directly from Technomate/E2/Carpenter  
 7 and/or DCI/Home Star.

8       377. In wrongfully, falsely, improperly, and without authorization designating  
 9 Blackstone Tower Fans and Blackstone Personal Fans imported, sold and/or distributed by Costco  
 10 as products as distributed by Blackstone and using Blackstone's UPC number and customer service  
 11 information, including the email address that clearly identifies Blackstone  
 12 ([customerservice@blackstoneltd.com](mailto:customerservice@blackstoneltd.com)), Costco is acting deceptively to pass off on the public the  
 13 goods of Costco as that of Blackstone and trading upon the good name and reputation built up by  
 14 Blackstone.

15       378. Based on these actions, the deception of consumers that will confuse the fans  
 16 imported, distributed, and/or sold and/or by Costco as products of Blackstone is a natural and  
 17 probable result of Costco's actions. As a result, Costco's unauthorized use of the designation  
 18 identifying Blackstone as the distributor, Blackstone's UPC number, Blackstone's customer  
 19 service information, and Blackstone's warranty cards are unfair and deceptive business practices  
 20 and part of a scheme to misleadingly represent the origin of the product, use Blackstone's customer  
 21 service contacts without authorization, and avoid liability for fans sold and distributed by Costco  
 22 and expose Blackstone to responsibility and potential liability for Costco's products, thereby  
 23 competing unfairly with Blackstone in violation of Washington law.

24       379. Costco also engaged in unfair methods of competition, including by tortiously  
 25 interfering with Blackstone's business and contractual relationships with the factories. For  
 26 example, Costco interfered with Blackstone's agreements with DCI/Home Star (and Mikia) and

1 unfairly competed with Blackstone.

2       380. In addition, Costco also improperly encouraged, caused, and/or aided in DCI/Home  
3 Star's wrongful pursuit of baseless claims against Blackstone.

4       381. Costco's use of misrepresentations, omissions, and duress also constitutes unfair  
5 methods of competition.

6       382. After destroying Blackstone's business for the 2019 season, Costco also continued  
7 to unfairly compete with Blackstone in the subsequent seasons.

8       383. As described above, after the Expired License expired, Costco conspired to  
9 misappropriate Blackstone's unique methods and processes, proprietary modeling and formulas,  
10 and valuable and exclusive know-how for Costco's knock-off fans.

11      384. For example, Costco unlawfully utilized Blackstone's pallet optimization,  
12 packaging design requirements, and shipping container logistics. And Costco also knowingly  
13 utilized Blackstone's Cascade-branded fan as the design base for Costco's knock-offs.

14      385. Costco also continued to improperly utilize Blackstone's proprietary and/or  
15 confidential information regarding Blackstone's business relationship with the factories.

16      386. Costco also continued to wrongfully utilize Blackstone's invoicing and pricing  
17 information.

18      387. On information and belief, Costco also conspired to utilize Blackstone's tooling  
19 and molds.

20      388. Costco also utilized Blackstone's designs, packaging, logistics, and other  
21 proprietary information.

22      389. Costco has also sold, and continues to sell, knock-offs of the Blackstone Tower  
23 Fan, including the Sierra Tower Fan and OmniBreeze Tower Fan.

24      390. Costco's unfair competition is injurious to Blackstone, including lost sales,  
25 confusion as to the source of the fans, and an improper association with Blackstone that serves to  
26 dilute the goodwill that Blackstone has developed in the market.

1       391. In fact, as described above, and evidenced by the substantial number of customer  
 2 complaints regarding fans that Costco purchased directly from Technomate/E2/Carpenter and/or  
 3 DCI/Home Star for the 2019 season, as well as Costco's knock-off fans (*i.e.*, the Sierra Tower Fan  
 4 and OmniBreeze Tower Fan) for the 2020 season and 2021 season, consumers are confused about  
 5 the origin of the fans.

6       392. The deception of consumers, including by Costco's unauthorized use of the  
 7 designation identifying Blackstone as the distributor, as well as the unauthorized use of  
 8 Blackstone's customer service information, warranty cards, and UPC number, is part of Costco's  
 9 unlawful scheme to misleadingly represent the origin of the fans, avoid liability for the fans, and  
 10 expose Blackstone to responsibility for the fans and potential liability, thereby competing unfairly  
 11 with Blackstone.

12       393. Costco wrongfully acquired profits and business lines to which Blackstone was  
 13 legally entitled to collect from the sales of its products under existing contracts and business  
 14 relationships.

15       394. Costco further wrongfully acquired profits and business lines to which Blackstone  
 16 was legally entitled to collect from the sales of its products under existing contracts and business  
 17 relationships by falsely designating the origin of their products and using Blackstone's customer  
 18 service information and warranty cards.

19       395. Costco also wrongfully acquired profits and business lines to which Blackstone was  
 20 legally entitled to collect from the sales of knock-off products.

21       396. It would be inequitable to allow Costco to retain funds and proceeds resulting from  
 22 its wrongful conduct.

23       397. As a direct, proximate result, and foreseeable result of Costco's misconduct,  
 24 Blackstone has suffered irreparable harm to its business and reputation, and other damages in an  
 25 amount to be proven at trial.

26       398. As the result of the unfair competition, Costco has caused, and will continue to

1 cause, substantial injury to consumers and to Blackstone. Unless granted an injunction, Costco  
 2 will continue to employ their wrongful and illegal business practices to Blackstone's immediate  
 3 and irreparable injury.

4       399. In addition, and in the alternative, in the absence of the Expired License Costco  
 5 also unfairly competed with Blackstone by utilizing all of Blackstone's intellectual property listed  
 6 in Exhibit A, Addendum Exhibit A-1, and Second Addendum Exhibit A-2 of the Expired License.  
 7 In the absence of the Expired License, Costco also unfairly competed with Blackstone by utilizing  
 8 Blackstone's federally-registered and common law trademarks in connection with the fans Costco  
 9 purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar for the 2019 season.

10 **H. Eighth Claim: Violation of Washington Consumer Protection Act**

11       400. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 12 above paragraphs.

13       401. Costco's wrongful acts constitute unfair methods of competition and/or unfair and  
 14 deceptive acts and practices occurring in commerce, in violation of the Washington Consumer  
 15 Protection Act, RCW 19.86, *et seq.*, including by at least the following misconduct: (i) falsely and  
 16 misleadingly designating certain fans as "Distributed By" Blackstone; (ii) misappropriating  
 17 Blackstone's customer service information and misrepresenting customer service; (iii)  
 18 misappropriating Blackstone's warranty cards and misrepresenting warranty information; (iv)  
 19 utilizing Blackstone's UPC number without authorization; (v) misappropriating Blackstone's trade  
 20 dress; (vi) engaging in unfair business practices; (vii) violating the Lanham Act as a predicate  
 21 establishing a public harm; and (viii) violations of additional predicates affecting the public  
 22 interest.

23 **Falsely and Misleadingly Designating Certain Fans as "Distributed By" Blackstone**

24       402. As described above, Costco falsely, wrongfully, improperly, and without  
 25 authorization designated certain fans as "Distributed By" Blackstone.

26       403. Costco's false labeling as "Distributed By" Blackstone, not only has the capacity

1 to deceive a substantial portion of the public, but (in fact) has misled the public and has caused  
 2 consumer confusion as to the source and origin of the fans.

3 **Misappropriating and Misrepresenting Blackstone's Customer Service Information**

4 404. As described above, Costco also falsely, wrongfully, improperly, and without  
 5 authorization listed Blackstone's customer service information on the fans purchased directly from  
 6 Technomate/E2/Carpenter and/or DCI/Homestar.

7 405. Blackstone has received (and continues to receive) complaints through its customer  
 8 service phone numbers and customer service email from consumers who purchased fans that were  
 9 not sold to Costco by Blackstone.

10 406. Costco's unauthorized use of Blackstone's customer service information, not only  
 11 has the capacity to deceive a substantial portion of the public, but (in fact) has misled the public  
 12 and has caused consumer confusion as to the source and origin of the fans.

13 **Misappropriating and Misrepresenting Blackstone's Warranty Cards**

14 407. As described above, Costco also falsely, wrongfully, improperly, and without  
 15 authorization utilized Blackstone's warranty cards for fans purchased directly from  
 16 Technomate/E2/Carpenter and/or DCI/Homestar.

17 408. Blackstone has also received warranty cards from consumers for fans that were not  
 18 sold to Costco by Blackstone.

19 409. Costco's unauthorized use of Blackstone's warranty cards, not only has the capacity  
 20 to deceive a substantial portion of the public, but (in fact) has misled the public and has caused  
 21 consumer confusion as to the source and origin of the fans.

22 **Utilizing Blackstone's UPC Number Without Authorization**

23 410. As described above, Costco also falsely, wrongfully, improperly, and without  
 24 authorization utilized Blackstone's UPC number on fans purchased directly from  
 25 Technomate/E2/Carpenter and/or DCI/Homestar.

26 411. Costco's unauthorized use of Blackstone's UPC number, not only has the capacity

1 to deceive a substantial portion of the public, but (in fact) has misled the public and has caused  
 2 consumer confusion as to the source and origin of the fans.

3 **Misappropriating Blackstone's Trade Dress**

4 412. As described above, Costco has misappropriated Blackstone's trade dress by  
 5 mimicking a combination of several elements of Blackstone's trade dress.

6 413. Blackstone's products have their own particular look and Blackstone's trade dress  
 7 is protectable under the Lanham Act because it is inherently distinctive and/or has achieved  
 8 secondary meaning or acquired distinctiveness in the market. Based on extensive marketing,  
 9 promotion, and sales throughout the United States, the consuming public has come to recognize  
 10 Blackstone's trade dress as signifying Blackstone as the particular source of fans that mimic  
 11 Blackstone's packaging, overall design, louver system, grill, arched top form, control panel layout,  
 12 control panel and icons, logo application, cylindrical stock, base, fit, and finish of the Blackstone  
 13 Tower Fan and remote-control design. Blackstone's trade dress is inherently distinctive and/or  
 14 secondary meaning or acquired distinctiveness, as evidenced by the fact that consumers associate  
 15 Blackstone' trade dress with Blackstone and are confused by the source of knock-off products sold  
 16 by Costco.

17 414. Costco's mimicking of the Blackstone Tower Fans and their distinctive design  
 18 elements, which have secondary meaning and/or acquired distinctiveness, not only has the capacity  
 19 to deceive a substantial portion of the public, but (in fact) has misled the public and has caused  
 20 consumer confusion as to the source and origin of the fans.

21 **Engaging in Unfair Business Practices**

22 415. As described above, Costco has engaged in unfair business practices, including  
 23 utilizing unfair methods of competition and/or unfairly competing with Blackstone.

24 416. Costco engaged in such unfair business practices both for the 2019 season and after  
 25 the Expired License expired.

26 417. For example, Costco misrepresented certain fans as distributed by Blackstone,  
 27

1 misrepresented customer service information, misappropriate Blackstone's warranty cards, and  
 2 unlawfully utilized Blackstone's UPC number.

3       418. During both the 2020 season and 2021 seasons, Costco also sold knock-offs of  
 4 Blackstone's fans.

5       419. Costco also conspired to utilize Blackstone's tooling and molds.

6       420. Costco also misappropriated Blackstone's unique methods and processes,  
 7 proprietary modeling and formulas, and valuable and exclusive know-how

8       421. Costco's unfair business practices, not only has the capacity to deceive a substantial  
 9 portion of the public, but (in fact) has misled the public and has caused consumer confusion as to  
 10 the source and origin of the fans.

### **Violating the Lanham Act**

12       422. As described above, Costco has violated the Lanham Act in several ways.

13       423. The unauthorized use of Blackstone's intellectual property or confusingly similar  
 14 variations of Blackstone's products constitutes an unfair method of competition and/or unfair and  
 15 deceptive act or practice. And the unauthorized use of Blackstone's intellectual property has  
 16 caused injury to Blackstone and confusion as to the source of the infringing products. Thus,  
 17 Costco's many violations of the Lanham Act provide a predicate under the CPA in that they  
 18 establish a public harm.

19       424. Costco's several violations of the Lanham Act, not only has the capacity to deceive  
 20 a substantial portion of the public, but (in fact) has misled the public and has caused consumer  
 21 confusion as to the source and origin of the fans.

### **Additional Predicates for Costco's Unfair and/or Deceptive Acts or Practices**

23       425. In addition, Coscto's unfair and/or deceptive acts or practices also violates  
 24 numerous additional predicates affecting the public interest.

25       426. For example, Costco's false designation as "distributed by" Blackstone constitutes  
 26 as violation of 15 U.S.C. §1453 (a provision of the Fair Packaging and Labeling Act), which

1 prohibits distribution of “any packaged consumer commodity” that fails to conform to specified  
 2 labeling requirements, including “the name and place of business of the manufacturer, packer, or  
 3 distributor.”

4 427. Costco’s unfair and/or deceptive acts or practices also violate Section 337 of the  
 5 Tariff Act (19 U.S.C. § 1337), which provides that unfair methods of competition and unfair acts  
 6 in the importation or sale of articles into the United States are unlawful.

7 428. Additionally, on information and belief, Costco utilized Blackstone’s tooling and  
 8 molds without authorization, which violates RCW 63.52.010.

9 429. All of Costco’s wrongful acts described above — including (i) falsely and  
 10 misleadingly designating certain fans as “Distributed By” Blackstone; (ii) misappropriating  
 11 Blackstone’s customer service information and misrepresenting customer service; (iii)  
 12 misappropriating Blackstone’s warranty cards and misrepresenting warranty information; (iv)  
 13 utilizing Blackstone’s UPC number without authorization; (v) misappropriating Blackstone’s trade  
 14 dress; (vi) engaging in unfair business practices; (vii) violating the Lanham Act as a predicate  
 15 establishing a public harm; and (viii) violations of additional predicates affecting the public interest  
 16 — have caused and are likely to continue to cause confusion, mistake, and deception among  
 17 consumers, and the public, including existing and potential customers, as to the source, origin,  
 18 and/or affiliation of (a) the fans Costco purchased directly from Technomate/E2/Carpenter and/or  
 19 DCI/Home Star for the 2019 season; (b) the knock-off fans (*i.e.*, the Sierra Tower Fan) for the  
 20 2020 season; and (c) the knock-off fans (*i.e.*, the OmniBreeze Tower Fan) for the 2021 season.

21 430. Costco’s wrongful acts have the capacity to deceive a substantial portion of the  
 22 public and, as described above, have already deceived a substantial number of consumers.

23 431. Costco’s wrongful acts have caused and are likely to continue to cause confusion,  
 24 mistake, and deception, thereby both impacting the public interest and injuring Blackstone’s  
 25 business and reputation.

26 432. Costco’s wrongful acts have caused and are likely to continue to cause confusion,  
 27

1 mistake, and deception among consumers, and the public, including existing and potential  
 2 customers, as to the source, origin, and/or affiliation of the Sierra Tower Fan and OmniBreeze  
 3 Tower Fan.

4       433. Costco's conduct has affected and is contrary to the public interest, has tended to  
 5 mislead a substantial portion of the public as to the source, origin, endorsement or approval of  
 6 Blackstone's products, and will continue to injure Blackstone in its business and property.

7       434. Costco's unfair methods of competition and/or unfair and deceptive acts or  
 8 practices are capable of repetition, have confused consumers and the public, and are likely to injury  
 9 others. For example, following Costco's knock-off fans for the 2020 season, another knock-off  
 10 fan labeled "Omnibreeze" was sold at Costco outlets for the 2021 season. In addition, the unfair  
 11 methods of competition and/or unfair and deceptive acts or practices utilized by Costco have been  
 12 or will be utilized by Costco and others to injury additional plaintiffs.

13       435. Among other examples of Costco's unfair or deceptive acts affecting the public  
 14 interest, Costco intentionally misled consumers regarding both the source of the fans and which  
 15 company was responsible for customer service. The resulting confusion is not only capable of  
 16 repetition, but also has results in repeated (and continuing) customer confusion. As described  
 17 above, consumers are confused, frustrated, and angry. In short, Costco falsely labeled the fans as  
 18 distributed by Blackstone and also intentionally lied to the consuming public about Blackstone's  
 19 responsibility for customer service.

20       436. The deception of consumers, including by Costco's unauthorized use of the  
 21 designation identifying Blackstone as the distributor, as well as the unauthorized use of  
 22 Blackstone's customer service information, warranty cards, and UPC number are unfair and  
 23 deceptive business practices and part of a scheme to misleadingly represent the origin of the fans,  
 24 which has already created significant confusion and harmed the public.

25       437. As a direct, proximate, and foreseeable result of Costco's unfair methods of  
 26 competition and unfair and deceptive acts and practices, Costco has been unjustly enriched and  
 27

1 Blackstone been injured and has suffered substantial damages, in an amount to be proven at trial,  
 2 including treble damages and reasonable attorney's fees and costs under RCW 19.86.090.

3       438. Unless the foregoing alleged actions of Costco are enjoined, Blackstone will  
 4 continue to suffer injury and damage. Accordingly, Blackstone should also be awarded  
 5 preliminary and permanent injunctive relief, treble damages, and costs, including reasonable  
 6 attorneys' fees, under RCW 19.86.090 and RCW 7.40.020.

7       439. In addition, and in the alternative, in the absence of the Expired License Costco  
 8 also violated the Washington Consumer Protection Act, RCW 19.86, *et seq.* by utilizing all of  
 9 Blackstone's intellectual property listed in Exhibit A, Addendum Exhibit A-1, and Second  
 10 Addendum Exhibit A-2 of the Expired License. In the absence of the Expired License, Costco  
 11 also violated the Washington Consumer Protection Act, RCW 19.86, *et seq.* by utilizing  
 12 Blackstone's federally-registered and common law trademarks in connection with the fans Costco  
 13 purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar for the 2019 season.

14 **I. Ninth Claim: Copyright Infringement**

15       440. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 16 above paragraphs.

17       441. Blackstone is the rightsholder to the copyrights of Copyrighted Works, which  
 18 consist of original material that constitutes copyrightable subject matter under the laws of the  
 19 United States.

20       442. Blackstone has complied in all respects with the Copyright Act and all of the laws  
 21 of the United States governing copyrights, including timely registering the copyrights of  
 22 Copyrighted Works with the United States Copyright Office, Registration Nos. TX0008690544,  
 23 TX0008696259, and TXU002132551.

24       443. Costco has directly, vicariously and/or contributorily infringed, and unless  
 25 enjoined, will continue to infringe Blackstone's copyrights, by reproducing, displaying,  
 26 distributing and utilizing the Copyrighted Works for purposes of trade in violation of 17 U.S.C. §

1 501 *et seq.*

2       444. Costco has willfully infringed on the Copyrighted Works by knowingly  
 3 reproducing, displaying, distributing, and/or utilizing the Copyrighted Works for purposes of trade,  
 4 and/or materially contributed the infringing conduct with respect to the Copyrighted Works.

5       445. Costco's willful infringing conduct has disregarded Blackstone's rights. Costco's  
 6 acts of infringement are willful because, *inter alia*, Costco can cease distribution and/or sale of the  
 7 Sierra Tower Fan.

8       446. As a direct and proximate result of the foregoing acts, Blackstone has been and will  
 9 continue to be harmed. Under 17 U.S.C. § 504(b), Blackstone is entitled to its actual damages,  
 10 including any and all of Costco's profits attributable to its wrongful conduct, or statutory damages  
 11 under 17 U.S.C. § 504(c). Blackstone is also entitled to its costs, including reasonable attorney  
 12 fees, under 17 U.S.C. § 505.

13       447. Blackstone also seeks and is entitled to an order under 17 U.S.C. § 502 enjoining  
 14 Costco from any further infringement of Blackstone's copyrights.

15       448. In addition, and in the alternative, in the absence of the Expired License Costco has  
 16 also directly, vicariously and/or contributorily infringed, and unless enjoined, will continue to  
 17 infringe Blackstone's copyrights, by reproducing, displaying, distributing and utilizing the  
 18 Copyrighted Works for purposes of trade in violation of 17 U.S.C. § 501 *et seq.* in connection with  
 19 the fans Costco purchased directly from Technomate/E2/Carpenter and/or DCI/Homestar for the  
 20 2019 season.

21 **K. Tenth Claim: In the Alternative, in the Absence of the Expired License, Infringement  
of Federally-Registered and Common Law Trademarks**

22       449. Blackstone re-alleges and incorporates by reference each of the allegations in the  
 23 above paragraphs, excluding allegations for copyright infringement.

24       450. As described above, the Expired License was induced by fraudulent inducement,  
 25 fraudulent concealment, fraud, intentional misrepresentation, and/or negligent misrepresentation,  
 26 as well as undue duress. If the Expired License is rescinded, voided or voidable, invalid, and/or

1 otherwise not enforceable, then Costco has also infringed Blackstone's trademarks.

2 451. Blackstone owns a federally-registered trademark for its stylized "B."

3 452. Blackstone also owns trademark protection for the Cascade brand name, logo, and  
4 proprietary alphabet, as well as Blackstone's name and logo. Blackstone has continuously used  
5 those unregistered trademarks for several years. Given Blackstone's use of its common law  
6 trademarks since long before any date upon which Costco can rely for purposes of priority,  
7 Blackstone's unregistered trademarks are senior to any rights of Costco.

8 453. In the absence of the Expired License, Costco's use of Blackstone's stylized "B"  
9 mark constitutes trademark infringement in violation of in violation of 15 U.S.C. § 1114.

10 454. In the absence of the Expired License, Costco's use of Blackstone's unregistered  
11 trademarks constitutes trademark infringement in violation of in violation of 15 U.S.C. § 1125 and  
12 the common law.

13 455. In the absence of the Expired License, Costco's infringement of Blackstone's  
14 federally-registered and common law trademarks is knowing, deliberate, willful, intended to cause  
15 mistake and to deceive, and in disregard of Blackstone's rights.

16 456. In the absence of the Expired License, as a direct and proximate result of Costco's  
17 infringement of Blackstone's federally-registered and common law trademarks, Blackstone has  
18 suffered damages in an amount to be proven at trial.

19 457. In the absence of the Expired License, pursuant to 15 U.S.C. § 1117, Blackstone is  
20 further entitled to an award of enhanced damages and attorneys' fees and costs.

21 458. In addition, in the absence of the Expired License, Blackstone has no adequate  
22 remedy at law that will compensate Blackstone for the continued and irreparable harm Blackstone  
23 will suffer if Costco's conduct is allowed to continue. Thus, in the absence of the Expired License,  
24 Blackstone seeks to enjoin Costco from using Blackstone's federally-registered and common law  
25 trademarks in connection with the fans Costco purchased directly from Technomate/E2/Carpenter  
26 and/or DCI/Homestar.

1  
2                   **VI. DEMAND FOR JURY TRIAL**

3         459. Pursuant to Fed. R. Civ. P. 38, Blackstone demands a trial by jury of all issues so  
4 triable that are raised herein or which hereinafter may be raised in this action.

5                   **VII. PRAYER FOR RELIEF**

6         Wherefore, Blackstone prays for relief as follows:

7         A. For judgment against Costco and an award for all actual, compensatory, direct,  
8 statutory, consequential, and/or any other damages, and any costs incurred in the fair and  
9 reasonable efforts Blackstone has promptly taken to mitigate its losses, in an amount to be proven  
10 at trial;

11         B. For damages resulting from Costco's breach of the 2019 Fan Program Agreement,  
12 breach of implied covenant of good faith and fair dealing, fraud, negligent misrepresentations,  
13 tortious interference, violations of the Lanham Act, common law unfair competition, violations of  
14 the CPA, and infringement of Blackstone's copyrights, the exact amount of which will be  
15 determined at trial;

16         C. For enhanced and/or treble damages, as authorized by law, including 15 U.S.C. §  
17 1117 and RCW 19.86.090;

18         D. For an accounting and award to Blackstone and against Costco of all Costco's  
19 profits, gains or unjust enrichment, including future profits, in an amount to be proven at trial;

20         E. For imposition of a constructive trust to collect funds and proceeds resulting from  
21 the sales of products formerly sold by Blackstone, which were only acquired through Costco's  
22 wrongful conduct, for the benefit of Blackstone and order Costco as constructive trustee to convey  
23 all of its right, title, and interest in any and all these funds and proceeds Costco has received to  
24 Blackstone;

25         F. For an award of Blackstone's costs and reasonable attorney fees incurred in  
26 bringing this action pursuant to any applicable provision of law, including pursuant to 15 U.S.C.  
27

1      § 1117 and RCW 19.86.090;

2            G. For an award of pre-judgment and post-judgment interest at the maximum rate  
3 allowed by law;

4            H. For injunctive relief prohibiting Costco from the manufacture, distribution,  
5 importation, sale, and/or sale for importation of the Sierra Tower Fan and OmniBreeze Tower Fan;

6            I. For leave to amend this Complaint as necessary; and

7            J. For such other and further relief as the Court may deem just and proper.

8

9            **RESPECTFULLY SUBMITTED** this February 13, 2023.

10

11            **GOLDFARB & HUCK ROTH RIOJAS, PLLC**

12            /s/ Christopher M. Huck

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15            /s/ R. Omar Riojas

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28

29            **Attorneys for Plaintiff**  
30            **Blackstone International, Ltd.**

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system on February 13, 2023 and was served via the Court's CM/ECF system on all counsel of record.

DATED this February 13, 2023.

/s/ Christopher M. Huck  
Christopher M. Huck, WSBA No. 34104

**SECOND AMENDED COMPLAINT - 105  
CASE NO. 2:20-CV-00964-TSZ**

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